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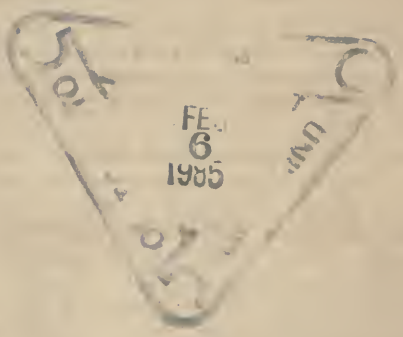
A

MANUAL FOR SHIPMASTERS.



LIVERPOOL:
G. PHILIP AND SON, PRINTERS, SOUTH CASTLE STREET

A

MANUAL FOR SHIPMASTERS;

IN

A SERIES OF LETTERS,

ADDRESSED TO THEM, ON THEIR

Qualifications, Duties, Powers, Responsibilities, &c.

ARISING

DURING THE COURSE OF A VOYAGE.

The Sixth Edition,

GREATLY IMPROVED, AND ADAPTED TO THE

MERCHANT SHIPPING & CUSTOMS CONSOLIDATION ACTS.

BY JAMES LEES,

AUTHOR OF "THE LAWS OF SHIPPING AND INSURANCE,"
ETC., ETC., ETC.

LONDON:
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AND 51 SOUTH CASTLE STREET, LIVERPOOL.

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EXPLANATION OF THE ABBREVIATIONS.

Abbot.—Abbot on the Law of Merchant Shipping and Seamen.
A. E.—Adolphus and Ellis's King's Bench Reports. N. R.—New Reports.
Arn.—Arnauld's Law of Marine Insurance and Average.
B. Ad.—Barnwell and Adolphus's King's Bench Reports.
B. A.—Barnwell and Alderson's King's Bench Reports.
B. C.—Barnwell and Cresswell's King's Bench Reports.
Ben.—Benecke's Principles of Indemnity in Marine Insurance.
Bing.—Bingham's Common Pleas' Reports.
Bing. N. C.—Bingham's New Cases in Common Pleas.
Bligh.—Bligh's Reports in House of Lords.
B. P.—Bosanquet and Pullar's Common Pleas' Reports.
B. B.—Broderip and Bingham's Common Pleas' Reports. N. R.—New Reports.
Bro. P. C.—Brown's Parliamentary Cases.
Burr.—Burrough's Reports in King's Bench.
Camp.—Campbell's Nisi Prius Reports.
C. M. R.—Carrington, Meeson, and Roscoe's Reports in Error.
C. P.—Carrington and Payne's Common Pleas' Reports.
D. L.—Danson and Lloyd's Commercial Reports.
Dod.—Dodson's Admiralty Reports.
Dow.—Dow's Reports of Appeal Cases in House of Lords.
East.—East's King's Bench Reports.
Edw.—Edward's Admiralty Reports.
E. B.—Ellis and Blackburn's Queen's Bench Reports.
Esp.—Espinasse's Nisi Prius Reports.
Exch.—Welsby, Hurlstone, and Gordon's Exchequer Reports.
Hag.—Haggard's Admiralty Reports.
Holt.—Holt's Law of Shipping, 2d edition.
Jur.—English Jurist Reports.
L. J.—English Law Journal.
L. T.—English Law Times.

Mar.—Marshall on Insurance.
M. S.—Maule and Selwyn's King's Bench Reports.
M. W.—Meeson and Welsby's Reports in Exchequer.
M. M.—Moodie and Malkin's Nisi Prius Reports.
M. R.—Moodie and Ryan's Nisi Prius Reports.
E. F. Moo.—Moore's Privy Council Reports.
Park.—Park's Law of Insurance, 8th edition.
Rob.—Robinson's Admiralty Reports.
W. Rob.—W. Robinson's Admiralty Reports.
S. D.—Shaw and Dunlop's Court of Session Reports.
Starkie.—Starkie's Nisi Prius Reports.
Taunt.—Taunton's Common Pleas Reports.
T. R.—Termly Reports in King's Bench.
Tyrwh.—Tyrwhitt's Reports in Exchequer.
W. H. G.—Welsby, Hurlstone, and Gordon's Exchequer Reports.

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A

MANUAL FOR SHIPMASTERS.

MANUAL FOR SHIPMASTERS, &c.

LETTER I.

Object of Letters to be *land duties*—What education necessary for these—Self-education inculcated—Manners must be attended to and cultivated—Self-possession and self-confidence must be acqnired—Drunkenness and drunken habits must be sedulonsly avoided—Trnst reposed in and responsibility attached to master—As a carrier—As the servant of others—And the master of servants—Must attend, as steward, to the affairs of owners—Abroad, is their accredited agent—As general carrier, liable to shippers—Agent for the shippers in case of wreck—Certificates for masters and mates of foreign-going and home-trade passenger-ships—Meaning of "foreign-going ships," "home-trade ship," and "home-trade passenger-ship," in the Merchant Shipping Act—Certificates of competency and service for masters and mates—Penalty for not possessing—Mode of obtaining certificates of competency—Examinations for—Qnalifications necessary—Fees payable—Classification of certificates—Certificates of service, to whom granted—Particulars of—Record of, by Registrar-General of Seamen—Certificate lost, &c.—Punishment of forging, &c.—Pilotage certificates for masters or mates—"Pilotage authority," meaning of term—Mode of obtaining certificate—Powers and exemptions thereby granted—Examinations appointed and certificates granted by Board of Trade—Fees payable for pilotage certificates—Withdrawal of certificates.

Gentlemen,—In addressing to yon the following Letters, I do not presume to instruct yon in *nautical affairs*, properly so called,—that is, in the sailing and management of a ship, or in the rules of navigation. My intention is, to explain to you other duties, equally important, to which neither owners nor masters seem to have paid that attention which, from their importance, they demand. These letters will more especially bring under your notice what may not inaptly be termed, for the sake of distinction, your *land duties*, in discharging which you may be called on to act in situations where there is no one to advise with, or, at least, no one on whose advice you can rely, and where, as it may often happen, you are compelled to act on your own judgment and responsibility. In order to furnish yon with a counsellor and guide, in these and similar emergencies, the following letters are addressed to you; and I sincerely trust they will be received in the same friendly spirit in which they are offered.

I may assume that, from your nautical education, you have the competent knowledge of geometry, mathematics, and astronomy requisite for the performance of your duties at sea; and equally requisite with these is the capability of writing a legible hand, of spelling correctly, and of composing in good grammar. The great responsibility which attaches to you, the almost unlimited trust and confidence which are placed in you, and the important situations which you hold, all demand that, *morally*, you must be so qualified for the situations you have undertaken; and it can be no great burden or hardship to a master to make such qualifications an essential element of his attainments.

And it is a matter of no difficulty to acquire these attainments. You have plenty of spare time on your hands, both on shore and at sea, generally speaking; and to what better purpose can you apply it, than in educating yourselves? I say, educating yourselves; for let me assure you, that the best of all education is what you give to yourselves. Generally speaking, letters from masters to their owners are rare specimens of illegible writing, bad grammar, and worse spelling; although, with a little attention, a plain business hand may soon be acquired; and, should you require it, a dictionary can easily guide you in spelling. You should accustom yourselves to express your *thoughts* in writing—to do so in the best language you can command, and in a proper and grammatical manner; and as your mind and practice improve, your command of language will also improve.

Connected with your education, are your manners, and to these you ought also to pay much attention. I trust the time is now past, or at least fast passing away, when a shipmaster can only expect his orders and commands to be obeyed when these are enforced by a volley of oaths and imprecations. You are in the situation of gentlemen, and therefore it is only reasonable to expect from you the manners and conduct of gentlemen. A good education and a sound knowledge will lead you to aspire to something superior, and will excite you to study and to imitate those who are your superiors in life. You may safely assume it as a general truth, that real merit is never obtrusive nor boisterous; and, while the manners and behaviour of a man of merit are altogether different from those of a fine gentleman shipmaster, they are quite remote from the coarseness and vulgarity of a drunken skipper. From the many opportunities which a well-informed shipmaster has of seeing men and manners, he ought always to form an agreeable companion, and will always be a welcome guest at the table of his employer. But then, his conversation must not be confined to his own profession, nor to his own element. His knowledge of the world ought to give importance to

his observations; and, according as he can join in general conversation, and communicate his varied information, he will be looked up to as an authority, and respected as a man.

Arising from a good education, sound sense, and a cultivated understanding, will be that self-possession and self-confidence which are so necessary for a shipmaster. You must not, however, confound self-possession and self-confidence with self-security and self-conceit. The former result from knowledge and experience; the latter from ignorance and obstinacy. By self-possession must be understood that calmness and collectedness in the midst of danger, and that moral courage and presence of mind necessary to surmount it; and by self-confidence, that dependence upon yourself and your own energies, which enables you to act with coolness, caution, and decision—to dissipate the fears and inspire the confidence of those around you. A master in possession of these qualities, is like a man walking in the broad daylight, who can see everything around him, and who knows where he is going and what he is doing; while the self-conceited and self-sufficient is like a man groping in the dark, uncertain to which hand to turn, and whether he may not fall over a precipice or plunge into a quagmire. The former are the accompaniments of an open, candid, and intelligent mind; while the latter are the never-failing characteristics of a narrow, ignorant, and grovelling understanding. Self-confidence will never prompt a man to rush into a seen danger, but will rather make him use every precaution either to avoid or to guard against even an apprehended danger; while, on the contrary, a self-conceited man will run headlong and blindfolded into an evident danger, and will not see his error until too late.

Drunkenness has been always so common among seamen, as to be almost proverbial. Its approaches are so imperceptible, that the habit is formed before you are aware; so that you cannot be too much upon your guard against indulging in any intoxicating liquor. The energies of both mind and body become so paralysed by this pernicious habit, that, unless timely checked, it very seldom can be overcome, but continues gaining strength, until the man is degraded below the level of the brute. No confidence can be placed in a drunkard, once he is known to be such; therefore, I say again, you cannot be too much upon your guard against it. I can scarcely conceive a situation in which more vigilance is required, and more unremitting attention demanded, than from the master of a vessel at sea. His eyes should be everywhere; and at all times and in all seasons he should be prompt and ready. A thousand casualties may occur in the darkness of night, or in an hour of danger, which may require his utmost promptitude and energy; but how can he be

prompt and ready, how can he be active and energetic, when in a state of intoxication, or of stupor, recovering from the effects of it? It is in vain to think, that, by renewing the stimulus, he may brace himself to meet the danger or the exigency of the moment. He may meet the danger, but with rashness—the exigency, but with foolhardiness; and he cannot encounter either with that calmness, collectedness, and intrepidity, which a proper shipmaster ought always to be able to do. Accidents, unquestionably, will happen to even the best and the most careful; and, even if an accident should happen, without any want of caution or vigilance, or from no self-security on your part, you must not give way to useless regrets or unavailing repinings, but, in any case, you must look the danger full in the face, examine it in all its bearings, and make the best of it, by endeavouring to extricate yourself in the best manner practicable. At all events, never think of having recourse to grog as a soother or comforter under your misfortunes. It may inflame, but it can never soothe; it may agitate, but it can never calm; it may aggravate and accumulate, but it can never mitigate or overcome the evils that may befall you. On no account, therefore, let liquor be your solace under misfortune, or even under any circumstances; for, to use the words of Solomon, "At the last it biteth like a serpent, and stingeth like an adder."

The possession of the qualifications before-mentioned will not be considered superfluous, nor the adoption of these precautions unnecessary, if you rightly consider the exuberant trust which is reposed in a shipmaster, and the great responsibility which attaches to him. Not only is he a carrier, entrusted with the charge of a valuable cargo, and responsible as such; but he is much more. He himself is the responsible servant of others,—and he is the uncontrolled master of others,—the father of a grown-up, and, sometimes, of an unruly family. He is entrusted by his owners with the exclusive charge and command of their vessel, and the lives of the seamen are committed to his keeping. As their servant, he is bound to devote his whole time and attention to the charge given him; and it is moral criminality for him to be careless or neglectful of that charge, or to hire, or even lend, his time or attention to the affairs or in the services of others. Your whole time and attention must be devoted to the concerns of your owners, in regard to the ship. For them, you are steward over their affairs, and, as such, you are bound to keep clear and regular accounts of these affairs, so as to be able, at any time, to render a satisfactory account of your stewardship. For this purpose, regular books of receipts and disbursements must be kept, in which you debit yourself with all the monies drawn or received for or on account of your owners; and you credit your-

self with all payments and disbursements made for or on account of the vessel or owners, of which you must regularly preserve the accounts and vouchers; and these, along with your own accounts, are to be delivered up to your owners. Further, you must recollect, that, abroad, you are the sole accredited agent of your owners, having power for them to enter into contracts for the employment of their vessel, to receive and draw the freights, to draw bills on your owners for necessary disbursements, and even, in cases of emergency, to borrow money on the security of the vessel; nay, in certain cases, when the vessel is wrecked or irrepairable, you can sell the vessel as a wreck; and, in extreme cases, as will be afterwards noticed, you are warranted in selling the vessel herself. This exuberance of trust necessarily carries with it a corresponding high degree of responsibility on your part, as master; and, therefore, I would have every master to be well aware, that, for the greater part of his actings, he is *directly* and *personally* responsible himself to the parties for whom he acts, or with whom he contracts.

Again, in regard to shippers, you, as master, are under an equally high degree of responsibility. As a general carrier, you are not only liable, under the charter-party or bills of lading, to deliver the goods in the like good state as you received them, but you are also personally liable for such damages as they may receive, otherwise than from the risks or perils excepted in the bill of lading. To you the cargo is entrusted, as to a trustee for the shipper, to deliver the goods to the person who has the legal right to demand delivery; and should you deliver the goods to any other than the proper party, you are personally liable in damages. In the case of wreck, and if the goods be *damaged* or *perishable*, you then become agent for the shippers, to the effect of disposing of these goods, at the same time that you also continue agent for your owners; and, in the former character, you can sell such damaged or perishable goods; but if the cargo be not perishable, nor seriously damaged, then you also become agent for the shippers. In such cases, necessity constitutes you the agent for them, and you must do the best you can for their interests; and you should bear in mind, that you are *personally responsible* to them if you do not. Besides, in an extreme case, and in a place where you have no credit, and no means of raising money to provide for the repairs necessary to enable the vessel to prosecute her voyage, you can, for the purpose of paying these repairs, sell part of the cargo, or hypothecate the whole, as well as the ship and freight.

Such is a brief outline of what may be termed your *moral* qualifications and your *civil* duties; but there is now superadded, by statute, another essential requisite—your competency for, and knowledge of,

your *marine* duties. It is not now as formerly, when owners could choose whomsoever they thought competent or qualified, to be masters or mates of foreign-going ships, or home-trade passenger-ships; but it is now necessary that the masters or mates of all such vessels should have certificates, either of competency or service, appropriate to their several stations—the meaning of which terms, and the mode of obtaining these certificates, I shall now explain to you.

In the first place, you must understand, that, in the Merchant Shipping Act, the term "foreign-going ship" includes every ship employed in trading or going between some place or places in the United Kingdom, and some place or places situate beyond the following limits, viz., the coasts of the United Kingdom, the islands of Guernsey, Jersey, Alderney, Sark, or Man, and the Continent of Europe, between the river Elbe (at the *north-east* extremity of the coast of Hanover) and Brest (at the *north-west* point of the coast of France) inclusive; the term "home-trade ship" includes every ship employed in trading or going within the following limits—viz., the United Kingdom, the islands of Guernsey, Jersey, Alderney, Sark, or Man, and the Continent of Europe, between the river Elbe and Brest inclusive; and the term "home-trade passenger ship" means every home-trade ship carrying passengers (17 & 18 Vict., c. 104, § 2). Merchant Shipping Act 1854

In the second place, you know that the masters and mates of foreign-going and home-trade passenger ships require to be possessed of certificates of competency or service, and, hence, they are called by the general name of certified masters or certified mates; and the Merchant Shipping Act enacts, that no foreign-going ship, or home-trade passenger ship, must go to sea from any port in the United Kingdom unless the master thereof, and, in the case of a foreign-going ship, the first and second, or only mate (as the case may be), and in the case of a home-trade passenger ship, the first or only mate (as the case may be), have obtained *and possess* valid certificates either of competency or service, appropriate to their several stations in the ship, or of a higher grade. No foreign-going or home-trade passenger ship, of one hundred tons burthen or upwards, must go to sea from any port in the United Kingdom, unless at least *one officer*, besides the master, has obtained, *and possesses*, a valid certificate appropriate to the grade of *only mate* therein, or a higher grade; and a penalty, not exceeding fifty pounds, is incurred for each offence, by every person who, having been engaged to serve—as master, or as first, or second, or only mate of a foreign-going ship, or as master or first or only mate of a home-trade ship—*goes to sea from any port in the United Kingdom*, as such master or mate,

without being, at the time, entitled to and *possessed* of a certificate, as before required, or *who employs* as master, or first, second, or only mate of any foreign-going ship—or as master, or first or only mate of a home-trade passenger ship—without ascertaining that he is, at the time, entitled to and possessed of a certificate, as before required (§ 136).

Persons who intend to become masters or mates of foreign-going or home-trade passenger ships, or who wish to procure *certificates of competency*, *must* undergo examinations as to their knowledge of and proficiency in seamanship and navigation. The Board of Trade, from time to time, lay down rules as to the conduct of these examinations, and the qualifications of the applicants; and these rules must be strictly adhered to by all examiners. No examiner can be appointed unless he possesses a certificate of qualification, to be, from time to time, granted or renewed by the Board; and the Board can, at any time, depute any of its officers to be present, and assist at any examinations. The sanction of the Board is necessary as to the number of examiners to be appointed, and the amount of their remuneration; and if it appears to the Board, that the examinations for any two or more ports can be conducted without inconvenience by the same examiners, the Board can authorise and require the local marine boards of these ports to act together as one board, in providing for and regulating examinations, and appointing examiners for these ports; otherwise, the local marine boards provide for the examinations at their respective ports, and can appoint and, from time to time, remove and re-appoint examiners to conduct the examinations, and can regulate the same; and any members of the local marine board of the place where the examination is held can be present, and assist at these examinations (§§ 131, 132).

To every applicant who is duly reported, by the local examiners to the Board of Trade, to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability, and general good conduct on board ship, the Board of Trade delivers a certificate of competency, to the effect that he is competent to act as master, or as first, second, or only mate of a foreign-going ship,—or as master or mate of a home-trade passenger ship, as the case may be. But, in every case in which the Board has reason to believe that this report has been unduly made, the Board can remit the case either to the same or other examiners, and may require the re-examination of the applicant, or a further inquiry into his testimonials and character, before granting him a certificate (§ 134).

All applicants for examination must pay such fees, not exceeding £2 for a certificate as master, and £1 for a certificate as mate, as the Board of Trade directs (§ 133).

Every certificate of competency for a foreign-going ship is deemed to be of a higher grade than the corresponding certificate for a home-trade ship, and entitles the lawful holders thereof to go to sea in the corresponding grade in a home-trade passenger ship; but no certificate for a home-trade passenger ship entitles the holder to go to sea as master or mate of a foreign-going ship (§ 137).

Again, *certificates of service*, differing in form from certificates of competency, are granted as follows:—(*First*), Every person who, before 1st January 1851, served as master in the British merchant service, or who has attained, or may attain, the rank of lieutenant, master, passed master, or second master, or any higher rank, in the service of her Majesty, or of the East India Company, is entitled to a certificate of service as master of a foreign-going ship: (*Second*), Every person who, before the above date, served as mate in the British merchant service, is entitled to a certificate of service as mate for foreign-going ships: (*Third*), Every person who, before 1st January 1854, has served as master of a home-trade passenger ship, is entitled to a certificate of service as master for home-trade passenger ships: and (*Fourth*), Every person who, before the same date, has served as mate of a home-trade passenger ship, is entitled to a certificate of service as mate for home-trade passenger ships.

Each certificate of service contains the particulars of the name, place, and time of birth, and of the length and nature of the previous service of the person to whom the same is delivered; and the Board of Trade delivers these certificates of service to the various persons respectively entitled thereto, upon their proving themselves to have attained the rank, or to have served as before required, and upon their giving a full and satisfactory account of the foregoing particulars (§ 135).

These certificates, whether of competency or service, are made in duplicate, and one part of these duplicates is delivered to the person entitled to the certificate, and the other part is kept and recorded by the Registrar-General of seamen, or by such other person as the Board of Trade appoints for that purpose; and the Board gives immediate notice to the registrar, or such other person, of all orders made by it for cancelling, suspending, altering, or otherwise affecting any certificate, in pursuance of the powers in the Merchant Shipping Act, as will be noticed in the course of these letters; and, thereupon, the registrar, or that other person, makes a corresponding entry in the record of certificates (§ 138).

Upon a master or mate proving, to the satisfaction of the Board of Trade, that, without fault on his part, he has lost, or been deprived of, the certificate which had been granted him, the Board can, upon payment of such fee as it directs, cause a copy of the cer-

tificate, appearing by the record he is entitled to, to be made out and certified, and delivered to him, and this copy, so made and certified, has all the effect of the original (§ 139).

Should any person make, or procure to be made, or assist in making, any false representation for the purpose of obtaining for himself, or any other person, a certificate of competency or service, or should forge, assist in forging, or procure to be forged, or should fraudulently alter, assist in fraudulently altering, or procure to be fraudulently altered, any certificate or any official copy thereof, or should fraudulently make use of any certificate or copy which is forged, altered, cancelled, suspended, or to which he is not justly entitled, or should fraudulently lend his certificate, or allow it to be used by any other person; he, for such offence, is deemed guilty of a misdemeanour—a crime which, with its punishment, will be afterwards explained (§ 140).

And, lastly, there is another matter connected with the navigating of your ship to which you require to attend, and that is the obtaining of a pilotage certificate by yourself or your mate. No doubt you are, or ought to be, so familiar with the waters and dangers of the navigation of and adjoining to the port to which your ship belongs, or, at least, you can without much trouble make yourself so acquainted with these waters and that navigation, as to be enabled to pilot your own vessel while therein without having a licensed pilot on board. But you cannot legally do this, unless you or your mate be possessed of a pilot's certificate from the pilotage authority of the district within which these waters are situated, over which such piloting is required; and this pilotage certificate is obtained in the following manner:—

Upon giving due notice and consenting to pay the fees, the master or mate of any ship can apply to any pilotage authority (that is, all bodies and persons authorised to appoint or license pilots, or to fix or alter rates of pilotage, or to exercise any jurisdiction in respect of pilotage), to be examined as to his capacity to pilot the ship of which he is master or mate, or any one or more ships belonging to the same owner within any part of the district over which that pilotage authority has jurisdiction; and if the pilotage authority thinks fit, the master or mate so applying can thereupon be so examined. If found competent, a pilotage certificate is granted to him, containing his name, a specification of the ship or ships in respect of which he has been examined, and a description of the limits within which he is to pilot the same—these limits being within the jurisdiction of that pilotage authority. This certificate enables the person therein named to pilot the ship, or any of the ships therein specified, of which he is acting as master or mate at

the time, but no other, within the limits therein described, without incurring any penalties for the non-employment of a qualified pilot (§ 340). But a pilotage certificate so granted is not in force for more than one year unless the same is renewed, which can be done, from time to time, by an indorsement under the hand of the secretary or other proper officer of the authority by whom that certificate was granted (§ 341).

If, upon complaint to the Board of Trade, it appears to the Board that any pilotage authority has, without reasonable cause, refused or neglected to examine any master or mate who has applied to them for that purpose, or, after he has passed his examination, has, without reasonable cause, refused or neglected to grant him a pilotage certificate, or that the examination has been unfairly or improperly conducted, or that any pilotage certificate granted by a pilotage authority has been improperly withdrawn—if, in the judgment of the Board, the circumstances appear to require it, the Board can appoint persons to examine that master or mate; and, if he is found competent, can grant him a pilotage certificate containing the same particulars as would have been inserted in a certificate granted by pilotage authorities; but upon such terms and conditions, and subject to such regulations, as the Board thinks fit. The certificate so granted is of the same force as if it had been granted by a pilotage authority, and is in force for one year, and can be renewed from year to year; and it can be so renewed, either by a pilotage authority or by the Board of Trade, if the Board thinks fit—this renewal being indorsed on the certificate, either by a person appointed by the Board for that purpose, or in manner before mentioned as to certificates granted by a pilotage authority (§ 342).

All the masters or mates, to or for whom pilotage certificates are granted or renewed by a pilotage authority, must pay to that authority, or as it directs, such fees upon their respective certificates, and upon the renewals thereof, as are from time to time fixed by that authority with consent of the Board of Trade; and all the masters or mates, to or for whom any such certificates are granted or renewed by the Board of Trade, must pay to the Board, or as it directs, such fees upon their certificates and renewals as the Board may fix—these latter fees being in no case less than the fees payable by the qualified pilots in the same districts upon their licenses, and the renewals of them (§ 343).

If, at any time, it appears to the Board of Trade, or to any pilotage authority, that a master or mate, to whom a pilotage certificate has been granted by the Board or by the pilotage authority, has been guilty of misconduct, or has shewn himself incompetent to pilot his ship, the Board or the pilotage authority (as the case may be) can

thereupon withdraw his certificate, and thenceforth that certificate ceases to be of any effect whatever (§ 344).

Having thus seen the necessity, in foreign-going or in home-trade passenger ships, for you, and your first and second mates, or only mate, in a foreign-going ship, and your first or only mate in a home-trade passenger ship, possessing proper and valid certificates, either of competency or service, appropriate to each grade, before going to sea, and the propriety of either you or your mate being possessed of a pilotage certificate, I shall in the next letter proceed to consider the engagement, duties, and rights of the crew.—I am, &c.

LETTER II.

Engaging seamen—General duties of shipping masters—Apprentices and indentures—Character and capabilities of seamen—Moral character—Production of certificate of character—Licenses for engaging or supplying seamen—Agreement with seamen, and heads of—Rules as to agreements for foreign-going ships—Engaging substitutes—Rules for running engagements for foreign-going ships—For home-trade ships—Seamen not joining—Punishment of—False statements by seamen—Erasures, &c., in agreement—Rules as to production of agreements, and certificates of competency or service—In foreign-going ships—In home-trade ships—In home-trade passenger ships—Posting up agreement—Final list of crew—Seamen discharged before commencement of voyage—Engaging a seaman in British possessions abroad, or at a place out of Her Majesty's dominions—Legal right to wages—Allotment notes—Recovery of sums under.

Gentlemen,—Having thus shewn you the requisite qualifications of yourselves and mates, let us now proceed to the important duty of the engagement of your crew, and their duties and rights; and, preparatory to this, it will be necessary to make you acquainted with the duties of the shipping master in regard to the engaging of seamen.

By the Merchant Shipping Act (§ 124), it is appointed to be the general business of shipping masters:—1, To afford facilities for engaging seamen by keeping registeries of their names and characters; 2, to superintend and facilitate their engagement, and also their discharge in the manner to be afterwards mentioned; 3, to provide means for securing the presence on board, at the proper times, of the men who are so engaged; 4, to facilitate the making of apprenticeships to the sea service; and, 5, to perform such other duties, relating to merchant seamen and merchant ships, as are committed to them by the Act, and as will fall to be noticed afterwards (§ 124).

And every shipping master hears and decides any question whatever, between a master or owner and any of his crew, which both

parties agree *in writing* to submit to him. The award (decision of the referee) made by him in such matter so referred, is binding on both parties; and, in any legal proceeding that may be taken in the same matter before any court, this award is deemed to be conclusive as to the rights of the parties. Neither the submission (reference) nor the award requires a stamp (§ 173).

Every owner or master who engages or discharges his seamen, or any seaman, in a shipping office, or before a shipping master, pays to the shipping master the whole of the fees payable in respect of that engagement or discharge; and for the purpose of in part reimbursing himself, he can deduct from the wages of all persons (except apprentices) so engaged or discharged, and retain any sums not exceeding the sums in the schedule annexed to the Act,—namely, 1s. 6d. for each mate, purser, engineer, surgeon, carpenter, or steward; and 1s. for all the others, except the apprentices. If the sums so deducted exceed the amount of the fee thus payable to him, this excess is paid to the shipping master in addition to his fee (§ 126).

There are now no statutory regulations or restrictions as to the number of apprentices to be carried on board certain ships, or as to the period for which these apprentices require to be bound; but the Merchant Shipping Act enacts that all shipping masters, if applied to for that purpose, give to any board of guardians, overseers, or other persons desirous of apprenticing boys to the sea service, and to masters and owners requiring apprentices, such assistance as in their power for facilitating the making of these apprenticeships, and can receive from the persons availing themselves of their assistance the fees fixed on that behalf by the Board of Trade, with the concurrence, so far as relates to English pauper children, of the English Poor-law Board, and so far as relates to Irish pauper children, of the Irish Poor-law Commissioners (§ 141). And when a boy is bound an apprentice to the sea service by the guardians or overseers of the poor, or other persons having the authority of guardians of the poor, the indentures must be executed by the boy and the person to whom he is bound, in the presence of, and are to be attested by, two justices, who have to ascertain that the boy has consented to be bound, has attained the age of twelve years, and is of sufficient health and strength, and that the master to whom he is to be bound is a proper person for the purpose (§ 142).

All indentures of apprenticeship to the sea service must be in duplicate, and are exempt from stamp-duty. Within seven days after the execution of the indentures, the person to whom the boy is so bound must take or transmit these indentures either to the Registrar-General, or to some shipping master, who retains and records

one copy, and indorses on the other copy that the indenture has been so recorded, and delivers this other copy to the master of the apprentice. Whenever an indenture is signed or cancelled, and whenever the apprentice dies or deserts, within seven days after this assignment, cancellation, death, or desertion—if the same happens within the United Kingdom, or if the same happens elsewhere—so soon afterwards as circumstances permit, the master of the apprentice must notify the same, either to the registrar or to some shipping master, to be recorded. The person who fails to comply with these provisions, incurs a penalty not exceeding £10 (§ 143).

Before carrying an apprentice to sea from any place in the United Kingdom, the master of a *foreign-going ship* must cause that apprentice to appear before the shipping master before whom the crew is engaged, and must produce to him the indenture by which that apprentice is bound, and the assignment or assignments thereof, if there be any. The name of the apprentice, with the date of the indenture, and of any assignment or assignments, and the name of the port or ports at which the same have been registered, are entered on the agreement; and for any default in obeying these provisions, the master incurs, for each offence, a penalty not exceeding £5 (§ 145).

I come to consider the engagement of the seamen, and their duties and rights flowing from that engagement. The engaging of a crew is a duty specially imposed upon you as master, and it is a duty in the performance of which there is required no small amount of discrimination and judgment as to the characters and capabilities of the men whom you may be about to engage. Generally speaking, you may find an abundance of hands ready and anxious to engage; but, among this abundance, it needs considerable experience of this class of men, and a good knowledge (which you can easily acquire) of the individuals, to enable you to distinguish the good from the bad, the honest, active, and deserving, from the obstinate, the ignorant, and the indolent.

One of the first considerations to be attended to in a seaman is the character he has obtained from his previous masters. I do not mean his character as a *sailor;* for you will often find a good sailor to be a worthless, unprincipled fellow, whom, for no consideration, you should have on board your ship. But, by a seaman's character, I mean his *moral character*,—that honest principle of rectitude which leads a man to do his duty as his duty,—not because he may be compelled to do it, but because he knows the duties he was expressly engaged to perform, and because he knows his moral obligation to perform these duties. Let the same reasons which guide you in selecting domestic servants for your family on shore guide you in

the selection of the individuals who are to form the members of your crew when afloat. You do not admit a domestic servant into your family without satisfying yourself, by trustworthy inquiries, both that she is capable of performing the work she has to do, and that her moral character is unexceptionable. Then, why admit any one as a member of your family on board ship without you satisfactorily ascertain, not merely that he is capable of the physical and scientific duties which he undertakes, but that his moral character and moral integrity are unexceptionable? It will not do to rest satisfied with a man's being able to hand, reef, and steer, when you have it in your power satisfactorily to judge of his previous conduct, character, and qualifications; and it seems to me that much of the unsettled habits and fondness of change so generally prevalent among seamen may be fairly attributed to this neglect or apathy in making strict inquiry into their previous character. You have the means placed in your own hands, and it is your own fault if you do not use them. Not only must the master enter in the official log any of the offences enumerated in § 243 which a seaman may commit, and also a statement of the conduct, character, and qualifications of each of the crew, or a statement that he declines to give an opinion on these particulars (§ 282), and he must also deliver to each seaman a full and true account of his wages, and of all deductions to be made therefrom on any account whatever (§ 171). And, during the voyage, he must enter in a book *kept for that purpose*, the various matters for which deductions are made, and the amount of each of these deductions, which book he must, if required, produce at the time of paying the wages (§ 171); but likewise, upon every discharge, the master must make and sign in the sanctioned form a report of the conduct, character, and qualifications of the persons discharged, or he can state, in the column left for that purpose, *that he declines to give an opinion upon these particulars, or any of them* (§ 176); and, if desired by any seaman, the shipping master gives to him, or indorses on his certificate of discharge, a copy of so much of this report as concerns him (§ 176).

Here, then, are, first, an important *moral test* to be used by you in selecting the members of your crew; and, second, an equally important *moral power* to be applied by you for the government of that crew. As to the use of this *test*, you have the very easy means of ascertaining, from an accredited report, the conduct, character, and qualifications of the seaman during his previous voyage; or, if his former master declines to give any opinion upon his conduct, character, and qualifications, or upon any of them, then, what is the conclusion to be drawn from this declinature by his former master? Plainly, that that master, assuming him to be an honest man, could

not conscientiously say anything favourable to him; and therefore, while he has said nothing *positively* with regard to his conduct, character, or qualifications, he has, *negatively*, left everything to be inferred against him. So that a seaman, whose master has stated that he declines to give any opinion upon his conduct, character, and qualifications, or upon any of them, is just in the position of an ordinary servant discharged without a character; and it is well known, what an abject appearance such a servant makes in offering himself for another place.

And, with respect to the *moral power*, which, under the sections already referred to, you can apply for the government of your crew, it is evident, that as they must know that every offence, for which a forfeiture, penalty, or punishment is to be enforced, must be entered into the official log, read over to the offender, and signed as directed by the statute, and that the master must also enter in that log a statement as to the conduct, character, and qualifications of each member, or a statement that he declines to give any such opinion, and that the official log must be delivered to the shipping master,—this knowledge should, as its natural effect, lead them to guard against the commission of any such offence, and should prompt them to a spontaneous obedience to every lawful command. Not that your crew should be made the unwilling slaves of your tyranny, under threats that you can report their conduct, character, and qualifications, as you think proper; but, by shewing them, for their own sake, that any departure from the proper line of conduct and behaviour,—from the honest and straightforward conduct and character of British seamen,—must be reported by you to the shipping master against them; which should, and no doubt will, stimulate seamen so to act as to deserve this favourable report, and will prevent a seaman who cannot produce a favourable report, or as to whom the master has declined to give any opinion, from being engaged, or, if engaged, only at a lower rate of wages.

There is no doubt that the facilities of changing ships, which have hitherto been afforded to seamen, have greatly contributed to encourage that unsteadiness, discontentedness, and love of change merely for the sake of change, so generally observant among the ordinary class of seamen. Seldom can they be got to sail two voyages running in the same ship; and, from whatever cause this may arise, it is unquestionably much to be regretted. It may be from faults in the men, or in the master, or in both; but the evil would be of less frequent occurrence if all would consider their respective duties to each other in the proper light. A good master will always be desirous to retain in his service men whom he knows to be good seamen, and seamen will always be anxious to remain

under one whom they have found to be a kind, humane, and intelligent master. And why should this not be so? Carry the habits of domestic life on board ship, if not in degree, at least in kind. You should recollect that sailors are your family, with whom you will have to encounter many a stormy blast, and to outlive many a tempestuous night,—that it is upon their exertions the safety of the ship and cargo and the lives of all on board have often to depend,—and therefore, while your commands are given with firmness, and must be executed with promptitude, your conduct and demeanour towards your seamen should uniformly be marked with moderation and kindness, and you should always shew a careful solicitude to promote their comfort. I will afterwards take up the subject of the discipline to be observed on board, but I am much mistaken if this kindness and condescension on your part will not produce obedience and docility on theirs.

The Board of Trade grants to such persons as it thinks fit licenses to engage or supply seamen or apprentices for merchant ships in the United Kingdom, to continue for such periods, to be upon such terms, and to be revocable upon such conditions as the Board thinks proper (§ 146). The following offences are punishable as follows:—(1.) If any person not so licensed,—other than the owner, master, or mate of the ship, or some person *bona fide* the servant and in the constant employment of the owner, or a shipping master duly appointed,—engages or supplies any seaman or apprentice to be entered on board any ship in the United Kingdom, he incurs, for each seaman or apprentice so engaged or supplied, a penalty not exceeding £20. (2.) If any person employs an unlicensed person,—other than the persons so excepted as above,—for the purpose of engaging or supplying any seaman or apprentice to be entered on board a ship in the United Kingdom, he incurs, for each seaman or apprentice so engaged or supplied, a penalty not exceeding £20; and, if licensed, he in addition forfeits his license. (3.) If any person knowingly receives, and accepts to be entered on board ship, any seaman or apprentice who has been engaged or supplied contrary to these provisions, he incurs, for every seaman or apprentice so engaged or supplied, a penalty not exceeding £20 (§ 147). And if any person demands or receives, either directly or indirectly, from any seaman or apprentice, or from any person seeking employment as a seaman or apprentice, or from any person on his behalf, any remuneration whatever, other than the fees authorised by the act, he incurs, for every such offence, a penalty not exceeding £5 (§ 148).

The master of every ship, except ships of less than eighty tons registered tonnage, exclusively employed in trading between different

ports on the coasts of the United Kingdom, must enter into an agreement with every seaman whom he carries to sea from any port in the United Kingdom, as one of his crew, in manner to be immediately mentioned; and this agreement must be in the form sanctioned by the Board of Trade,—must be dated at the first signature thereof,—must be signed by the master before any seaman signs,—and must contain the following particulars as the terms thereof:—

(1.) The nature, and, as far as practicable, the duration of the intended voyage or engagement.

(2.) The number and description of the crew, specifying how many are engaged as sailors.

(3.) The time at which each seaman is to be on board, or to begin work.

(4.) The capacity in which each seaman is to serve.

(5.) The amount of wages which each seaman is to receive.

(6.) A scale of the provisions which are to be furnished to each seaman.

(7.) Any regulations as to conduct on board, as to fines, short allowance of provisions, or other lawful punishments for misconduct, sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt.

And this agreement is so framed as to admit stipulations to be adopted at the will of the master and seaman in each case, as to advances and allotment of wages, and may contain any other stipulations not contrary to law. But if the master of a ship belonging to any British possession, has an agreement with his crew made in the form according to the law of the possession to which his ship belongs or in which his crew were engaged, and he engages single seamen in the United Kingdom, these seamen can sign the agreement so made, and it is not necessary for them to sign an agreement in the form sanctioned by the Board of Trade (§ 149).

In the case of all *foreign-going ships*, in whatever part of Her Majesty's dominions the same are registered, the following rules must be observed with respect to agreements:—

(1.) Every agreement made in the United Kingdom (except in cases of agreements with substitutes as after mentioned) must be signed by each seaman in presence of a shipping master.

(2.) The shipping master must cause the agreement to be read over and explained to each seaman, or must otherwise ascertain that each seaman understands the same before he signs it, and he attests each signature.

(3.) When the crew is first engaged, the agreement must be

signed in duplicate, and one part is retained by the shipping master, and the other part must contain a special part or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and is delivered to the master.

(4.) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea, by death, desertion, or other unforeseen cause, the engagement must, when practicable, be made before some duly appointed shipping master; and whenever this engagement cannot be so made, the master must, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen, and they are thereupon to sign the same in presence of a witness, who attests their signatures (§ 150).

In foreign-going ships making voyages averaging less than six months in duration, running agreements with the crew can be made to extend over two or more voyages, so that no such running agreement extend beyond the following 30th day of June, or the 31st day of December, or the first arrival of the ship at her port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon that arrival; and every person entering into a running agreement, whether engaged upon the first commencement thereof or otherwise, must enter into and sign the same in the same manner as is required for other foreign-going ships (§ 151).

The master of a foreign-going ship having a running agreement must, upon every return to every port in the United Kingdom, before the final termination of the agreement, discharge and engage before the shipping master at that port, any seaman whom he is required by law so to discharge or engage; and, upon every such return, he must indorse upon the agreement, a statement, either that no such discharges or engagements have been made or are intended to be made before the ship again leaves port, or that all such discharges or engagements have been duly made as required by the Merchant Shipping Act; and if the master wilfully makes a false statement in this indorsement, he incurs a penalty not exceeding £20. The shipping master also signs an indorsement on the agreement, to the effect that the provisions of the act relating to that agreement have been complied with, and he redelivers the agreement so indorsed to the master (§ 152).

The duplicate of the running agreement retained by the shipping master upon the first engagement of the crew, is either transmitted to the registrar-general of seamen immediately, or is kept by the shipping master until the expiration of the agreement, as the Board

of Trade directs (§ 153). And for determining the fees payable npon the engagement and discharge of seamen belonging to foreign-going ships which have these running agreements, the crew is considered to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates, and all intermediate engagements and discharges are considered to be engagements and discharges of single seamen (§ 154).

In *home-trade ships*, crews or single seamen can, if the master thinks fit, be engaged before a shipping master in the same manner as is directed with respect to foreign-going ships, and in every case in which the engagement is not so made, the master must, before the ship puts to sea, if practicable, and if not, as soon after as possible, cause the agreement to be read over and explained to each seaman, and therenpon each seaman signs the same in presence of a witness, who attests his signature (§ 155). And when several home-trade ships belong to the same owner, the agreement with the seamen can be made by the owner instead of by the master, and the seamen may be engaged to serve in any two or more of such ships, provided the names of the ships and the nature of the service are specified in the agreement. But, with this exception, all the foregoing provisions which relate to ordinary agreements for home-trade ships, are applicable to agreements made nnder this section (§ 156).

If, in any case, the master carries any seaman to sea without entering into an agreement with him in the form and manner, and at the place and time as is in snch case before required, the master in the case of a foreign-going ship, and the master or owner in the case of a home-trade ship, incurs for each such offence a penalty not exceeding £5 (§ 157).

It is no uncommon occnrrence, that a seaman, after having duly signed the agreement, neglects or refuses to join his ship, or to proceed to sea with her; and, accordingly, the Merchant Shipping Act provides for these occurrences. It enacts, that whenever a seaman has been lawfully engaged, but he neglects or refuses, withont reasonable canse, to join his ship, or to proceed to sea in her, or absents himself at any time within twenty-four hours of the ship's sailing, he is liable to imprisonment for any period not exceeding ten weeks, with or without hard labonr (§ 243).

Whenever at the commencement of a voyage, a seaman or apprentice refuses or neglects to join, or refuses to proceed to sea in the ship in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master, or any mate, or the owner, ship's husband, or consignee, can, with or without the assistance of the local police officers or constables, apprehend him without first procuring a warrant; and, thereupon, he *may* in

any case, and he *must* in case the seaman or apprentice so requires, and it is practicable, convey him before some court capable of taking cognisance of the matter, to be dealt with according to law. For the purpose of so conveying him before this court, he may be detained in custody for a period not exceeding twenty-four hours or such shorter time as may be necessary; or if he does not so require, or if there is no such court at or near the place, he can at once convey him on board. But, if it appears to the court before which the case is brought, that the apprehension has been made on improper or on insufficient grounds, the master, &c., making the same, or causing the same to be made, incurs a penalty not exceeding £20; but if this penalty is inflicted, it is a bar to any action for false imprisonment in respect of such imprisonment (§ 246).

When a seaman or apprentice is brought before a court on the ground of his having neglected, or refused to join, or to proceed to sea in the ship in which he is engaged to serve, if the master, or the owner, or his agent, so requires, instead of committing the offender to prison, the court can cause him to be conveyed on board for the purpose of proceeding on the voyage, or can deliver him to the master, or to any mate of the ship, or to the owner, or his agent, for the purpose of being so conveyed. In such case, the court can order any costs and expenses properly incurred by or on behalf of the master or owner, by reason of the offence, to be paid by the offender, and, if necessary, to be deducted from any wages he has then earned, or which, by virtue of his then existing engagement, he may afterwards earn (§ 247).

And if a seaman or apprentice is imprisoned on the ground of his having neglected, or refused to join, or to proceed to sea in the ship in which he is engaged to serve, and if, before his engagement is at an end, and during his imprisonment, his services are required on board his ship, *any* justice may, at the request of the master, or of the owner, or his agent, cause that seaman or apprentice to be conveyed on board his ship for the purpose of proceeding on his voyage, or to be delivered to the master, or to any mate of the ship, or to the owner, or his agent, to be by them so conveyed, notwithstanding the termination of the period for which he was sentenced to imprisonment has not arrived (§ 248).

If, on or before being engaged, any seaman wilfully and fraudulently makes a false statement of the name of his last ship or last alleged ship, or wilfully and fraudulently makes a false statement of his own name, he incurs a penalty not exceeding £5; and this penalty can be deducted from any wages he may earn by virtue of that engagement, and, subject to reimbursement of any loss and expenses that may have been occasioned by any previous desertion,

this penalty must be paid and applied in the same manner as other penalties payable under the Merchant Shipping Act (§ 255).

Every erasure, interlineation, or alteration in an agreement with seamen, as required by the Merchant Shipping Act (except the additions made for shipping substitutes or persons engaged subsequently to the first departure of the ship), is wholly inoperative, unless proved to have been made with the consent of all the persons interested in such erasure, interlineation, or alteration, by the written attestation of some shipping master, justice, officer of customs, or other public functionary, if the same is made in her Majesty's dominions, or, if made out of her Majesty's dominions, by the written attestation of a British consular officer, or, where there is no such officer, of two respectable British merchants (§ 163). And every person fraudulently altering, assisting in fraudulently altering, or procuring to be fraudulently altered, or making, or assisting in making, or procuring to be made, any false entry in, or delivering, or assisting in delivering, or procuring to be delivered, a false copy of the agreement, is deemed, for each such offence, to be guilty of a misdemeanour (§ 164).

The following rules must be observed with respect to the production of agreements and certificates of competency or service for *foreign-going ships* :—

(1.) On signing the agreement with his crew, the master must produce to the shipping master before whom the same is signed, the certificates of competency or service which he himself and his first or second or only mate, as the case may be, are required by the act to possess; and upon this production being duly made, and the agreement duly executed as required by the act, the shipping master signs and gives to the master a certificate to that effect.

(2.) In the case of running agreements for foreign-going ships, and before the second and every subsequent voyage made after the commencement of the agreement, on the master's complying with the provisions already mentioned with respect to such agreements, and producing to the shipping master the certificate of competency or service of any first, second, or only mate then first engaged by him, the shipping master signs and gives to the master a certificate to that effect.

(3.) Before proceeding to sea, the master of every foreign-going ship must produce to the collector or comptroller of customs the certificate so given to him by the shipping master; and no officer of customs can clear any foreign-going ship outwards without this production; and if she attempts to go to sea without a clearance, any customs officer can detain her until this certificate is produced (§ 161).

And the following rules must be observed with respect to the production of agreements and certificates of competency or service for *home-trade ships*:—

(1.) In home-trade ships of more than 80 tons burthen, no agreement can extend beyond the next following 30th day of June or 31st day of December, or the first arrival of the ship at her final port of destination in the United Kingdom, or the discharge of cargo consequent upon this arrival.

(2.) Within 21 days after the 30th day of June and the 31st day of December in every year, the master or owner of every home-trade ship must transmit or deliver to some shipping master in the United Kingdom, every agreement made within the six calender months next preceding these days respectively; and *in home-trade passenger ships*, he must produce to the shipping master the certificates of competency or service which the master and his first or only mate, as the case may be, are required by the act to possess.

(3.) Thereupon the shipping master gives to the master or owner a certificate of this delivery and production,—and no officer of customs can grant a clearance or transire for any such ship as last aforesaid, without the production of this certificate; and if any such ship attempts to ply or go to sea without this clearance or transire, any customs officer can detain her until said certificate is produced.

And if the agreement for a home-trade ship is not delivered or transmitted by the master or owner to a shipping master at the time and in the manner above directed, the master or owner incurs, for every default, a penalty not exceeding £5 (§ 162).

At the commencement of every voyage or engagement, the master must cause a legible copy of the agreement (omitting the signatures) to be placed or posted up in such part of the ship as to be accessible to the crew,—and in default he incurs, for each offence, a penalty not exceeding £5 (§ 166). And, before finally leaving the United Kingdom, the master of every *foreign-going ship*, of which the crew has been engaged before a shipping master, must sign and send to the nearest shipping master a full and accurate statement, in the form sanctioned by the Board of Trade, of every change which takes place in his crew before finally leaving the United Kingdom, and in default, he incurs, for each offence, a penalty not exceeding £5; and this statement is admissible in evidence, subject to all just exceptions (§ 158).

When a seaman has signed the agreement, and is discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying this discharge, and without his consent, he is entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for

the damage thereby caused to him, not exceeding one month's wages; and, on his adducing such evidence, as the court hearing the case deems satisfactory, of his having been so improperly discharged, he can recover this compensation as if it were wages duly earned (§ 167).

The engagement of seamen in the British possessions, or at any place out of her Majesty's dominions, is respectively regulated by the 159th and the 160th sections of the act, both of which will be more particularly and more appropriately detailed in a subsequent letter.

It has been already seen, that the time at which each seaman is to be on board, or to begin work, must be specified under the third head of the agreement; and it is enacted, that the seaman's right to wages and provisions is taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens (§ 181). No seaman forfeits, by any agreement, his lien upon the ship, or is deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in an agreement inconsistent with any provision of the act, and every stipulation by which a seaman consents to abandon his right to wages in case of the loss of the ship, or to abandon any right he may have or obtain in the nature of salvage, is wholly inoperative (§ 182). And no right of wages is dependent on the earning of freight (§ 183).

All stipulations for the allotment of any part of the wages of a seaman which are made, at the commencement of a voyage, to be paid during his absence, must be inserted in the agreement, and must state the amounts and times of the payments to be made; and all allotment notes must be in the form sanctioned by the Board of Trade (§ 168). The wife, or the father or mother, or grandfather or grandmother, or any child or grandchild, or any brother or sister of a seaman, in whose favour an allotment note of part of the wages of that seaman is made, can sue for and recover the sums allotted by the note, when and as the same are made payable, with costs, from the owner or any agent who has authorised the drawing of the note, either in the county court or in the summary manner in which seamen can recover wages not exceeding £50, unless the seaman is shewn, in the manner now to be mentioned, to have forfeited or ceased to be entitled to his wages out of which the allotment note is to be paid, and, as to the wife, subject to the provision after mentioned. In any proceeding for payment of the sums allotted by an allotment note, it is sufficient for the claimant to prove, that he or she is the person mentioned in the note, and that the note

was given by the owner, or by the master, or some other authorised agent; and the seaman is presumed to be duly earning his wages, unless the contrary is shewn to the satisfaction of the court, either by the official statement of the change in the crew caused by his absence, as required by § 158, or by a duly certified copy of some entry in the official log book, to the effect that he has left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence, *of whatever description,* as the court, in its absolute discretion, considers sufficient to shew satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment note is to be paid (§ 169).

You will afterwards see that, by § 282, you have to enter in the official log "every case of death happening on board, and of the cause thereof," and "the name of every seaman or apprentice who ceases to be a member of the crew, *otherwise than by death*, with the place, time, manner, and cause thereof;" and these entries must be signed as required by § 283. Should, therefore, any of your seamen cease to be a member of your crew, *from whatever cause*, and should thereby cease to be entitled to the wages out of which the allotment note has to be paid, and after you have made the requisite entries in the official log, and these have been duly signed, you ought to forward forthwith to your owners or to the ship's husband, certified copies of these entries, as evidence of that seaman having ceased to be a member of your crew, and entitled to his wages; and do not content yourself with merely informing the one or the other, not to pay the allotment notes of so and so seamen after a certain date.

When the allotment note is given to a seaman's wife, should she desert her children, or so misconduct herself as to be undeserving of support from her husband, she thereupon forfeits all right to further payments of the allotment of his wages which has been made in her favour. And when such a forfeiture takes place, your owner will attend duly to advise you thereof, in case you may have to settle your seamen's wages at some port other than the ship's home port.

And having thus seen the manner of engaging seamen, the officer before whom they have to be engaged, and the heads of the agreement, and the other requisites for the different trades, as well as the other essentials connected with the engagement of the seamen, let us now proceed to the taking in of a cargo.—I am, &c.

LETTER III.

Taking in cargo at home port—Ballasting vessel, and kind of ballast to be used—Dunnage—Quantity to be used—Damages for want of—Tackling, &c.— Damages to goods through default of—Commencement of responsibility for goods—Rules as to—In timber trade—Care of goods after they are on board—Manifest and cargo-book—When keeping of them begins—What should be entered in them—Receipt for goods—What it should contain—When it should be received back—Stowage of goods—Duty inenmbent on master as to—Full cargo—Partial cargo—Precantions against shifting—Cargo of grain, &c.—General cargo—Overloading vessel—Deck loads—Taking in cargo at foreign port—When vessel must be there by a certain day—Instances of failure—Shonld neither be deviation or delay—Instances of latter—Must be at port at all events—Unless exception of stress of weather, &c.—Duty on arrival—Lay days—How reckoned—Demnrrage as to loading—When ceases—Bill of lading must only be given in exchange for the receipt—Instance of danger in not doing so—Bills of lading shonld correspond with goods in manifest or cargo-book—Must not state what is contrary to the truth—Not conclusive between shipper and master—But is so if in the hands of an onerous indorsee—Instances as to—Precautions to be used by master in signing—Exceptions in.

Gentlemen,—Your crew having been engaged, and being all on board, your attention must be directed, in the next place, to taking in the cargo, and let us assnme that that cargo is to be taken in at a home-port.

The Customs' Consolidation Act enacts, that no person shall export any *warehoused goods*, nor enter any such goods for exportation from the United Kingdom to parts beyond the seas, in any ship of less burden than 50 tons, except to the Islands of Gnernsey and Jersey, in ships not being of less burden than 40 tons, regularly trading to these islands (16 and 17 Vict., c. 107, § 117).

Before proceeding to take on board any cargo, I need hardly say, that yonr first care is to have your vessel properly ballasted; and that, where it can possibly be obtained, as it can almost always be easily obtained at the ports in this conntry, stone ballast is to be preferred, unless yon have permanent iron ballast (which iron ballast is to be stowed fore and aft, from bnlkhead to bulkhead). On no account ought yon to take sand ballast where stone or snch like ballast can be had; and even in a case of necessity, when you are compelled to take sand ballast, you must use every possible means to prevent its entering into the pnmps and choking or destroying them. Even in small quantities, the sand may destroy the boxes of the pnmps, and render them unfit for service at a time, perhaps, when yon cannot get them repaired; and it may as readily choke the pnmps altogether. Should you, therefore, be, on any occasion, under the necessity of using sand ballast, it is yonr duty

carefully to caulk the ceiling, clear the timbers, and protect, with pitched canvas, matting, &c., the pumps, so that none of the sand may get admission.

The next essential requisite, to which you must particularly attend, is, that your vessel be properly dunnaged, and in a fit state to receive and carry her cargo. You are, of course, aware, that the purpose of dunnage is, to protect the cargo from the leakage of the vessel; and the extent of dunnage which must be used will necessarily vary, according to the condition of the vessel and the nature of the cargo. I am not aware that there is any general rule established or practised as to dunnage, further than the common practice and understanding, that there should be at least six inches in the bottom and nine in the bilges, and that, where the cargo is in bags, there should, in addition, be matting all the way up the sides. Should you neglect thus properly to dunnage the vessel, and should the cargo, in consequence of the want of proper dunnage, receive damage from the leakage or bilge-water, the owner of the goods will be entitled to set off his claim for these damages against a demand for the freight (Taylor *v.* Forbes, 9 S. D. B., 113).

Another requisite which also requires your particular attention is, that the ropes, tackling, &c., necessary for hoisting the cargo on board be in proper order, and sufficient for that purpose. It is an old-established rule, that when any part of the cargo is injured, spoiled, or lost, through the default or breaking of the ropes or apparatus, the damage lies upon you or your owners; and it has been even held, that should a cask be accidentally staved in letting it down into the hold, you and the owners will be liable to make good the loss (Abbot, 346).

It is enacted by the Amended Customs' Law Consolidation Act, that no goods can be shipped, put off, or water-borne to be shipped from any port or place in the United Kingdom, except on days not being Sundays or holidays, nor from any place except some legal quay, wharf, or other place duly appointed for that purpose; nor without the presence or authority of the proper officer of customs; nor before due entry outwards of the ship, and due entry of the goods; nor before these goods have been duly cleared for shipment; and any goods shipped, put off, or water-borne to be shipped contrary thereto are forfeited. The searcher can open, or cause to be opened and examined, all goods shipped or brought for shipment at any place in the United Kingdom, and the opening for that purpose of packages containing goods upon which any drawback of customs or inland revenue is claimed, and the weighing, repacking, landing (when shipped), and the shipping thereof, are done by or at the expense of the exporter (18 and 19 Vict., c. 96, § 9).

The time when your responsibility for goods to be shipped commences, must necessarily vary according to the custom of different ports, and to the kind of cargo you are to load; but, in general, when goods are to be shipped from the quay, your responsibility commences from the moment of their being laid down on the quay; and a delivery of goods to your mate, or any of the crew whom you may appoint to superintend the loading, will be sufficient to charge you (Holt, 387). If the ship's boats are sent to the shore for the goods, your responsibility commences with the delivery of them into the boats; but if the owners of the goods send boats, or a lighter, from the shore to the ship, with them, the responsibility of this conveyance lies with the owner himself; and should they receive damage, he must bear the loss himself, or pursue the owner of the boats or lighters for it (Lyon *v.* Wells, 5 East., 528). In the timber trade, where it is the practice to send the ship's boats to tow the rafts from a distance alongside the vessel, your responsibility will begin from the time these rafts are taken in tow; but if the freighter has to bring it alongside the vessel, your responsibility only commences from the time that each raft may be made fast to the vessel. In this trade, it is also necessary that the port holes of the vessel should be of a size sufficient to admit the logs of the country from which the timber is to be brought. I need scarcely add, that when the cargo is once on board, it must be carefully kept from theft or embezzlement by the crew and all others, otherwise you and your owners will be answerable for all such loss; and this precaution is the more necessary to be attended to on board general ships, the crews of which, if I am rightly informed, make no scruple of pilfering such small articles as are accessible to them.

With the receiving of the cargo on board, you must begin, in the foreign-trade, to fill up your manifest, and, in the home-trade, to keep your cargo-book. Both the one and the other are, I believe, entrusted to the mate or some other of the crew; but although a delivery to such person may be sufficient to make you and your owners *responsible* for the goods so delivered, it will be no excuse for you, if the goods are found damaged or deteriorated, or do not turn out to the quantity shipped, that, at loading, these goods were delivered to the mate or other person in charge of the loading. You, as a common carrier, are responsible for the safety of all goods delivered to the person in charge of the ship; and, although I do not say you are to be constantly at your vessel during the time of loading, yet you ought to be absent as little as you possibly can; and when any part of the goods are received on board, you or your mate, whilst they are stowing in the hold, ought to enter in the manifest or cargo-book the date of their being so received, the description of

the goods, and the state of their package, the name of the shipper, and the particular marks upon the goods, with any general remarks upon their condition, or liability to deterioration or corruption, which may be called for.

It is a common practice after the goods are on board that you, or the person in charge of the loading, grant a receipt for the goods received. This receipt ought strictly to be signed by yourself; but, whether it be or not, it should contain nothing more than an exact transcript of the entry of the particular goods in the manifest or cargo-book. You will, thereafter, be required to sign the usual bills of lading, which I shall come to by and by; but you should be extremely careful not to sign a bill of lading until you get possession of the previous receipts, and to deliver the bills of lading to no one but to the person who can deliver you these receipts in exchange for the bills of lading. By attending to this, and seeing that your receipt is destroyed when you deliver the bills of lading, you may save yourself from the disagreeable chance of the bills of lading being in the hands of one person, and the receipts in the hands of another, and both making a claim against you for the self-same goods.

The stowage of the cargo on board next claims your attention. In some ports, this may be done by persons who make the stowage of vessels their special calling, or by persons engaged by the merchant shipper; but, even then, the cargo should, for the safety of the vessel, be stowed under your superintendence and direction, as it is a duty specially incumbent upon *you*, so to stow and arrange the cargo, that there may be no possibility of its shifting, or of the different articles of which it may consist injuring one another, and that it cannot be damaged by the motion or leakage of the vessel (Abbot, 346). By an old Scotch statute, the punishment of improper stowage is, the loss of the freight, and repairing the damage done to the merchant; and this is the universal law of almost all maritime countries.

Where the cargo is of one kind, as of flax, cotton, hemp, tobacco, &c., the danger is not so great, when there is a full cargo, and when it has been properly secured, unless, perhaps, the cargo may have been too much compressed, or too tightly screwed into the hold, in which case danger is to be apprehended from its expanding or heating; but it is when a partial cargo is taken in, that the greatest danger is to be apprehended from its shifting. You can easily understand that when, with a partial cargo not properly secured, the vessel is thrown on her beam-ends, and the cargo shifts over to the other side lying in the water, it is next to impossible again for the vessel to right herself, and she must consequently fill with water and go down. How many vessels may have been lost from this

cause, and how extremely cautious ought this to make you in stowing a partial cargo! In such a case, you ought to secure every tier of the goods firmly in its own place, by covering it with strong boards, kept down by stanchions fastened to the timbers above; and, in cargoes of grain and such like, additional precautions must be taken. Commonly, the grain is thrown loose into the hold of the vessel; and you know it is a quite common occurrence that, although the vessel may be as full as she can hold at sailing, she will, on arriving at her port of destination, not be nearly full. This is occasioned by the cargo being hastily loaded, and neither care taken nor time given for it to settle properly; and therefore, in loading such a cargo, it will require the greatest attention from you, while loading, to settle the cargo properly, by driving long wedges into the grain, and using the utmost precaution properly to confine and secure it by strong division-boards and stanchions, so as to guard against the possibility of its shifting.

In stowing a general cargo, or a cargo consisting of various kinds of goods, it is a general rule, and a very ancient one, that soft goods, or goods apt to take damage, are not to be stowed below, and over them, hogsheads or puncheons from which leakage may arise, and by which the goods below may sustain damage. All laws agree, that for the damage thus sustained you are responsible; and, therefore, it is your bounden duty, in loading such a cargo, to take special care that casks of liquids or salt be not stowed upon bales of silks, cotton, or woollen goods.

Another danger you must guard against is, not to overload the vessel. Of course, you are entitled and the merchant charterer is bound to load the vessel, not merely according to the number of tons which may be specified in the charter-party, but to that extent which the vessel is capable of carrying with safety (Hunter *v.* Fry, 2 B. A., 421); and it is a general rule that, notwithstanding, there must be sufficient room left for the proper working of the vessel, as well as for her own furniture and the provisions of the crew; and you should also be aware, that if the vessel be overloaded, she is not seaworthy (Weir *v.* Aberdein, 2 B. A., 320). In some trades, it is a common practice to carry loads upon deck; but as this may materially impede the proper working of the vessel, you ought, if at all practicable, to avoid doing so; and in no case should you do so, without the previous consent of the merchant shipper, so as to save yourself from all questions of damages with the merchant or consignee in case these goods should be damaged, or in the event of their being thrown overboard in a storm. In some countries, the loading of goods on deck is expressly prohibited, and it is so in the timber trade between this country and America or Honduras.

By the Customs Consolidation Act, it is enacted, that before any clearing officer permits any ship, wholly or in part laden with timber or wooden goods, from any British port in North America, or in the settlement of Honduras, for any port in the United Kingdom, at any time after the 1st of September, or before the 1st of May in any year, he must ascertain that the whole of her cargo is below deck, and he gives the master a certificate to that effect; and no master of a ship so laden must sail from any of the foresaid ports for any port of the United Kingdom, at any time foresaid, until he has obtained this certificate from the clearing officer (16 and 17 Vict., c. 107, § 176). And no master must place, or permit or cause to be placed or remain upon or above the deck of his ship, any part of the cargo thereof, until his ship has arrived at her port of destination. But if the master considers it necessary, in consequence of springing a leak, or of other damage received or apprehended during the voyage, to remove any portion of the cargo upon deck, he can remove or cause to be removed upon the deck of his ship so much of the cargo, and permit the same to remain there for such time, as he considers expedient. Store spars, or other articles necessary for the ship's use, are not taken to be cargo (§ 171). And, if the master of a ship for which the foresaid certificate is required, sails or attempts to sail without having obtained this certificate, or places or permits, or causes to be placed or to remain, or to be upon or above the deck of his ship, any part of the cargo thereof, except in the cases foresaid, in which the same is not forbidden, he forfeits and pays for every offence a penalty not exceeding £100 (§ 172).

How far goods laden on deck and thrown overboard for the safety of the ship and cargo, are entitled to the benefit of a general contribution, will be considered afterwards.

When the vessel is freighted to proceed to a foreign port and load a cargo, the first point you have to look out for is, to be at that port by the time specified in the charter-party. In proceeding, therefore, to the port of loading, you must pursue the usual and direct course, without making any unnecessary deviation, and without entering into any intermediate voyage; and should you, in consequence of either, be too late in arriving at the port of loading, it will then be in the option of the charterer to load the cargo or not. I will give you an instance or two.

Thus, a vessel was freighted, by charter-party, from London to proceed to the Cape, and, having delivered goods there, to proceed with all convenient speed to Bombay, where the freighter was to load on board a cargo of cotton for England. The master arrived at the Cape, and might have proceeded on his voyage in two days, but remained there ten, taking in cattle for the Mauritius on his own

account, and he went round by the Mauritius in his way to Bombay, his port of lading, at which he arrived six weeks later than he would otherwise have done, had he proceeded thither direct. In the meantime, other vessels had arrived, and the freighter's agents, in consequence of the delay and deviation, refused to load the cargo; and, through the master's conduct, the freighter was found not liable in damages for the refusal to do so (Freeman *v.* Taylor, 8 Bing., 124).

Again, in another case, a vessel was chartered in October 1832 to go in ballast from Portsmouth to St Michael's, and to bring back a cargo of fruit direct to London. The charterer was to be allowed thirty-six running days for loading and unloading, to commence on the 1st December then next, and if the vessel did not arrive at St Michael's by the 31st January 1853, the charterer was to be at liberty to rescind the charter-party. Had the master proceeded direct to St Michael's, about the time of entering into the charter-party, there was a reasonable expectation that the cargo would have been delivered in London about the 1st January; but, in place of doing so, he made an intermediate voyage to Oporto, returned again to Portsmouth, and then sailed for St Michael's, where he arrived before 31st January, and was loaded with oranges, and arrived in London on 1st February; but, by this time, there was a glut of oranges in the market, and the price had fallen considerably; and, in an action for the loss, the master was held liable to the charterer (M'Andrew *v.* Adams, 1 Bing., N. S., 629).

These two examples may convince you that, when the vessel has to proceed to a port of loading abroad, there is an absolute necessity for you proceeding so by the shortest and most direct course, and making your arrival there your sole object, so as to restrain you from entering into any subordinate voyage or engagement which may have the effect either of taking you out of that course, or of retarding your progress and arrival. You see, that if the vessel is beyond the time fixed in the charter-party for arriving, the freighter may load the vessel or not as he pleases; and, should he not load the vessel, I need scarcely remark, what a loss that must entail on your owners, or that, though the merchant do load the vessel, yet, if, through the delay in the vessel's arrival, the goods come to a falling market, you and your owners may be liable to him for the loss he may thereby sustain. But, besides the duty which you thus owe to the charterer of the ship, you must also bear in mind that there are the underwriters to deal with, and that either deviation or delay may forfeit the insurances. I will take up the matter of deviation in another letter, but, here, I will just give you one example of the effects of the master's delaying, for his own purposes, to proceed direct to his port of loading, in a question with the underwriters.

A vessel was freighted to proceed from London to Singapore for a cargo to Europe, and the usual liberty was given to sail, touch, and stay at any place whatever, and to load, unload, and reload for all necessary purposes whatever. The vessel sailed from London in September 1833; but, in place of proceeding to Singapore, was detained by the master for his own purposes in Van Diemen's Land, and did not arrive at Singapore till the 30th March 1835, and sailed from thence with her cargo on the 3d May that year. This was an action on a policy of insurance on the freight from Singapore to Europe, and the jury found that the delay was unreasonable. The court held that, by so long a postponement of the risk, the underwriters were discharged (Mount *v.* Larkins, 8 Bing., 108).

And where there is an express condition, that the vessel shall sail for, or arrive at, her outward port of loading by a certain specified day, the vessel must sail for, or arrive at, that port by that day *at all events*; and it will be no excuse for the vessel *not* so arriving, that she was detained by contrary winds and bad weather. If the vessel do not arrive, not only is the freighter discharged from his contract, but you will be liable to him in damages (Abbot, 270). If, however, there is an exception in the charter-party, that should the vessel not arrive at the port of loading, in consequence of stress of weather, or other unavoidable impediment, the freighter is still to be bound to load the cargo;—this may have the effect of making him liable for the freight, or for the damages consequent on his failure to load,—provided it can be undoubtedly established, that the non-arrival was occasioned solely by stress of weather, or other such unavoidable obstruction as could not, by any reasonable degree of foresight, have been prevented (Granger *v.* Dent, 1 L. W., 270). But, should such a case occur to you, you must be careful to make your log-book contain evidence of the cause and continuance of the delay, as well as to provide other unexceptionable evidence, by which that delay can be established, if necessary.

It is not necessary for me to say more, as to the absolute necessity, where you are to be at a foreign port by a certain day, of your proceeding there in the direct course, and being there, at all events, by that day. By doing so, you will avoid all vexatious questions with the freighter, and save yourself and your owners from all liability for damages. I certainly should consider that shipmaster altogether unworthy of his situation, and of the trust reposed in him, who, when he knows the express terms of his charter-party, can, either for his own advantage or the emolument of his owners, engage in any subordinate traffic or voyage, which may have a chance of delaying his vessel beyond the appointed time, and thereby run himself and his owners into scrapes. Even when the charter-party is in the general

terms, to proceed "with all convenient speed" to the port of lading, you are not at liberty to deviate from the usual and ordinary course, nor to engage in any intermediate voyage, which may have the effect of delaying your arrival at the port, beyond the usual and ordinary time of the voyage, as by doing so, you leave it in the freighter's power to load or not, as he pleases, and to hold you and your owner liable in damages.

Having arrived at the foreign port of loading, your duty is to put yourself under the charge of the agent for the shippers, or the ship, if there be one. To one or the other of these you will have to intrust the clearing of the vessel, and doing what is necessary to permit her to load, of which it cannot be expected that you yourself can have a competent knowledge. The observations which I have already made, as to the loading of the cargo, and the commencement of your responsibility, apply equally to the loading of a cargo in a foreign, as in a home port. In both, the particular cargo must be laden according to the custom of the port at which it is to be laden; and I need not repeat what has been already said as to this.

It may be proper to say a few words here as to lay-days and demurrage. You know that the lay-days are those days which are allowed to the shipper, either for loading or unloading the vessel. These are either running or working days; the former including Sundays, when not expressly excluded, and there is no usage to the contrary; and the latter excluding Sundays and Custom-house holidays (Abbot, 304). Where the ordinary and customary time for loading is allowed, that must be regulated by the custom of the particular port, in loading the particular kind of cargo to be shipped. In loading, these lay-days cannot commence until the ship be at the place of loading, and in a state ready to receive her cargo. It is generally the duty of the crew, or of individuals hired for the purpose, to take the cargo on board; but if, in the charter-party, the shipper is bound to put it on board at his own expense, and, if he fail or refuse to do so, you are entitled to employ men, at his expense, so to do (Fletcher *v.* Gillespie, 3 Bing., 635). If the vessel be not fully loaded at the time of the expiry of the lay-days, it is your duty to take a protest against the shipper, stating the terms of the charter-party, the number of lay-days allowed, the time at which the vessel was ready to receive her cargo, and the date of the expiry of the lay-days, without the vessel's being loaded or fully loaded; and, therefore, protesting that the vessel thenceforth shall lie at the demurrage stipulated in the charter-party. You must, of course, employ a man of business to do this, as well as any other ship's legal business; and, in doing so, you should make it a rule to employ a respectable law-agent, whose character will be guarantee for the soundness of the advice he

may give, and on whom you can depend for doing his business in a proper business-like manner, and for charges, the same, if not more moderate, than many of the inferior grade of the profession.

It seems to be a general rule, that if the vessel be not ready, or the cargo not prepared, at the time appointed for loading, either party may disannul the contract,—the freighter may look out for another ship, and you for another cargo; but it is seldom, I suppose, that this will be the case. Where the freighter is responsible, there will scarcely be any occasion to do so; because, if he fail to load the cargo, or to complete the loading of the ship in terms of his bargain, he will be liable to make good the loss arising either from the want of the cargo, or from the deficiency in loading. And in such a case, the prudent course will be for the master to remain until the expiry of the days of demurrage, before he look out for another lading. But, where there are good grounds to suspect the credit or solvency of the freighter, there is less danger, on his failing to load, in taking other goods, or in completing the loading with the goods of others, so as to secure a full freight, and thereby lessen the damages which have to be claimed (Abbot, 249).

The term *demurrage* is applied both to the days which it is stipulated the vessel shall wait for the lading, after the expiry of the lay-days, and to the sum which it has been agreed the freighter shall pay for each of these days. The questions which have arisen as to the lay-days and demurrage at the unloading of the cargo, will come afterwards; but here, it may be mentioned, that it is no excuse for not loading the vessel within the lay-days, that the port of loading was frozen up, or the rivers by which the goods were to be conveyed to that port (Barrett *v.* Dutton, 4 Camp., 333); nor that a pestilential disorder had broken out at the port of loading, and all public intercourse had been prohibited at that port (Barker *v.* Hodgson, 3 M. S., 267). But the demurrage ceases so soon as the vessel is loaded and ready for sea, although she may be detained by contrary winds or tempestuous weather (Lannoy *v.* Werry, 2 Bro. P. C., 60); nor does the demurrage revive, although, after having sailed, she be driven back to the port by adverse winds, and be there frozen up (Jamieson *v.* Lawrie, 6 Bro. P. C., 472).

I have refrained, until now, saying anything as to the bill of lading. This is a most important document, and it is absolutely necessary that you distinctly understand the rules and obligations attendant upon it. There are, generally, three bills of lading signed for the goods, all of the same tenor and date; and any one of these being performed,—that is, the goods being delivered in terms of it,—the others become void. It is your written acknowledgment that you have received the goods mentioned in it, to be carried to the

place of destination; and when a receipt has been previously given for the goods, as already mentioned, you should be very careful to give the bills of lading to no other person than the one who can give you up the receipt for them. By using this precaution, you will avoid the possibility of getting into a scrape, as you might do, were the receipt granted to one party, and the bill of lading signed to another. For example:—Goods were sent on board a vessel, and a receipt was given for them, as received for and on account of the shippers, who had previously sold them to another individual; that individual sold them to a third party, who went to the shipmaster and obtained a bill of lading for the goods in his own name; but the shipmaster did not take the precaution to obtain the receipt in exchange. The individual to whom the goods had been first sold failed, and the shippers brought an action on the receipt against the shipmaster, for delivery of the goods to them, and they were found entitled to the goods,—it being held that it was contrary to the course of business, and to the shipmaster's duty, to give up the bill of lading without the receipt (Craven *v.* Ryder, 6 Taunt., 433).

It is too common a practice for any clerk in the office of the shipping agent to subscribe the bills of lading for the master; but you should be particular, where at all practicable, to sign the bills of lading yourself, and in taking care the goods entered in them correspond with the goods entered in your manifest or cargo-book. I need scarcely say, that bills of lading must not be signed until the goods are actually on board, and they must not contain anything that is contrary to or inconsistent with the truth. Although, as between the shipper himself and you and your owner, the bill of lading is not conclusive as to the exact quantity of the goods shipped, and is looked upon in law as merely a receipt, which may be opened up, to the effect of admitting evidence of the real facts; as, where a master was induced, through fraud of the shipper's agent, to sign a bill of lading for 890 bags of pepper, whereas only 790 bags were shipped (Bates *v.* Todd, 1 M. R., 106); yet where the bill of lading is in the hands of a third party, as of an indorsee for value, it will render you or your owners liable according to its contents. As, where the master signed a bill of lading, bearing the goods to be shipped on board a vessel, on an individual's account and risk, unto shipper's orders or his assigns, he or they paying freight for the said goods *being paid in Bengal;* the freight, in fact, was not paid in Bengal, but the individual, on whose account and risk the goods had been shipped, indorsed the bill of lading for value; and it was held that, as against the indorsee, the master could not claim freight on the vessel's arrival in this country, he having acknowledged, in the

bill of lading, the freight to have been paid before the vessel's departure from India (Howard *v.* Tucker, 1 B. Ad., 712).

It is now enacted by statute, that every bill of lading in the hands of a consignee or indorsee for valuable consideration, representing goods to have been shipped, is conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding these goods, or some part thereof, may not have been so shipped, unless the holder of the bill of lading has had actual notice, at the time of receiving the same, that the goods had not been in fact laden on board. But the master or other person signing the bill of lading may exonerate himself in respect of this misrepresentation, by shewing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or some person under whom the holder claims (18 & 19 Vict., c. 111, § 3).

When the quantity or quality of the goods shipped are unknown to you, as in nine instances out of ten will be the case, further than as you are informed by the shipper, you must take care, in signing the bills of lading, to write below your name, the words, "quantity and quality unknown." If the goods are in casks or bales, the contents of which must necessarily be unknown to you, you should, in like manner, write under your name the words, "contents unknown;" and should the goods be of a perishable nature, as fruit, cheese, &c., then you should write, "not liable for corruption or deterioration." By these precautions you will save yourself from all dispute as to the precise quantity to be delivered,—as to the state of the goods,—or as to the contents of packages.

You will observe that the bill of lading contains a clause saving you from responsibility for damage arising from "the act of God, the Queen's enemies, and all and every other dangers and accidents of the seas and navigation of whatever nature or kind." I will consider, in a future letter, what falls under these exceptions; and here, I may only observe, that the *act of God* comprehends all accidents arising from natural causes, as tempests, lightning, or earthquakes, in which the agency of man has no part; and that "all and every other dangers and accidents of the seas," &c., comprehend all accidents which arise from the seas and winds, and which could not be prevented by the care, skill, or foresight of the master or mariners.

You should bear in mind that, when you have once signed bills of lading for the cargo shipped on board your vessel, your power of signing bills of lading for that cargo is thereby exhausted; and, therefore, where 75 quarters of wheat were shipped, and a bill of lading was signed for these, which was pledged with third parties who made advances thereon; and then 70 quarters more were shipped, and a bill of lading was signed for these, and pledged in

the same manner to the same third parties; but the master was fraudulently induced to sign another bill of lading for the whole 145 quarters:—it was held, that the holders of the first bills of lading were entitled to the cargo (Hubbersty *v.* Ward, 8 W. H. & G., 330).—I am, &c.

LETTER IV.

Export trade—Entry outwards at Custom-house—Victualling bill—Before being shipped, goods must be cleared at Custom-house—Exportation of warehoused goods, &c.—Shipping bill of goods for which no bond is required—Shipping bill, when duly signed, is the clearance of the ship—Goods for which particular account is required—Goods not duly entered, or unshipped, relanded, &c.—Clearance of ship outwards—Goods liable to duty, &c., not duly shipped—Goods shipped without being duly cleared—Ship departing in ballast—Victualling bill is clearance of ship—Boarding of export ships by customs' officers—Lock, mark, &c., placed by customs' officers upon goods taken from warehouse as stores—Bringing to at stations for landing customs' officers—Coasting trade, definition of—Carrying goods coastwise—Times of shipping goods to be so carried—Cargo-book of coasting ship, and particulars of—Production of—Clearance of coasting ship—General transires—Delivery of transire at port of discharge—Unlading certain goods—Unlading goods contrary to enactment—Boarding coasting ships by customs' officers—Payment of port and light dues—Seaworthiness of ship—Conditions in charter-parties and policies of insurance as to—Implied warranty of—General rule as to—Danger of sailing without ships being seaworthy in all respects—Instance of—Meaning of being seaworthy in all respects—Unseaworthiness—From deficiencies or defects in hull—Instances of—From deficiencies or defects in rigging, &c.—Instances of—From inadequacy or incompetency of master or crew—Of master—Of crew—Without pilot—From being overloaded—From having sailed without being duly supplied with stores and provisions—And a supply of medicines, &c., suitable for the voyage—Boats for sea-going ships—Number and cubic contents of boats according to tonnage and class—Life-boat and life-buoys—Penalties for failure to provide—Neglect to replace or repair—Or not keeping fit and ready for use—No clearance or transire can be granted until so provided—Lights and fog signals—Certificates of mortgage or sale—Particulars to be entered in register-book before certificate of mortgage or sale is granted—Rules to be observed as to certificates of mortgage—Rules to be observed as to certificates of sale—Revocation of certificates.

GENTLEMEN,—Preparatory to taking on board any part of a cargo for exportation, it is necessary that you should know the Custom-house duties which you require to attend to.

The Customs Consolidation Act enacts, that, before any goods are taken on board the ship in which they are to be exported from the United Kingdom to parts beyond the seas, the master or his agent must deliver to the collector or comptroller a certificate from the proper officer, of the due clearance inwards or coastwise of his ship of her last voyage; and he must also deliver therewith, an *entry outwards* of his ship, of her last voyage, verified by his signature, in the form given in the act (of which form printed copies can be

obtained), or to the same effect, and containing the several particulars thereby indicated or required. But if the ship has commenced her lading at some other port, the master must deliver to the searcher the clearance of these goods from that other port; and if any goods are taken on board a ship at any port, before she has been entered outwards at that port (unless a stiffening order, when necessary, has been issued by the proper officer, to lade any heavy goods for exportation on board that ship), the master forfeits the sum of £100 (16 and 17 Vict., c. 107, § 118).

The Customs Act has the following enactment as to the shipping of stores for the use of foreign-bound ships:—

Upon due application made by the master of a ship of 50 tons burden, or upwards, departing from the United Kingdom upon a voyage to parts beyond the seas, the duration of which, out and home, is not less than forty days, and upon such terms and conditions as the Commissioners of Customs may direct, the master receives from the searcher an order for the shipment of such stores as may be required and allowed by the collector or comptroller for the use of his ship, with reference to the number of the crew and passengers on board, and the probable duration of the voyage on which she is about to depart. All demands for these stores must be made in such form and manner as the collector or comptroller require, and must be signed by the master or owner; and, after these stores are duly shipped, the master, or his agent, must make out an account of the stores so shipped, together with any other stores then already on board, and this account, when presented to the searcher, signed by him, and countersigned by the collector or comptroller, is the *victualling bill*. No stores must be shipped for the use of the ship, nor are any articles taken on board deemed to be stores, except such as are borne upon this victualling bill (§ 140).

No goods must be shipped, put off, or water-borne to be shipped for exportation, from any port or place in the United Kingdom, except on days not being Sundays or holidays, nor from any place except some legal quay, wharf, or other place duly appointed for that purpose, nor without the presence or authority of the proper officer of customs, nor before due entry of the ship and due entry of the goods, nor before these goods have been duly cleared for shipment; and any goods shipped, put off, or water-borne to be shipped contrary to this enactment, are forfeited. It is lawful for the searcher to open, or cause to be opened, and to examine, all goods shipped or brought for shipment at any place in the United Kingdom, and the opening for this purpose of packages containing goods, upon which any drawback of customs or inland revenue is claimed, and the weighing, repacking,

landing (when water-borne), and the shipping thereof, must be done by, or at the expense of, the exporter (18 and 19 Vict., c. 96, § 9).

Although it is no part of your duty to attend to the due entry and clearance at the Custom-house of goods for exportation, yet it is proper that you should know the form of so entering and clearing these goods, in order that, when brought to be laden, you may be able to judge whether or not they have been thus duly entered and cleared.

The Customs Consolidation Act enacts, that, before any warehoused goods, British wrought plate, or goods subject to duties of customs, or entitled to any drawback of customs, on exportation, or exportable only under particular rules, regulations, or restrictions, can be permitted to be exported, the exporter or his agent must deliver to the collector or comptroller a bond note or account of these goods, and give security, by bond, in double the amount of duty payable by law upon the *importation* of such goods, with one sufficient surety that these goods shall be duly shipped and exported, and shall be landed at the place for which they are entered outwards, or otherwise accounted for to the satisfaction of the Commissioners of Customs. This bond note, when certified by the proper officer, is the export entry for these goods (16 and 17 Vict., c. 107, § 120).

Before such goods can be shipped or water-borne to be shipped, for exportation, the exporter, or his agent, must deliver to the searcher, or other proper officer, a shipping bill of these goods in the form given in the act, or to that effect, and containing the particulars therein indicated, or thereby required (§ 121).

Before any goods, *for which no bond is required*, can be shipped or water-borne to be shipped, for exportation, the exporter, or his agent, must deliver to the searcher a shipping bill thereof, with such duplicates as may be required by him, in the form given in the act, or to that effect, and containing the several particulars indicated in, or required thereby. This shipping bill is the entry for the goods therein (§ 125). And the exporter who fails, by himself or his agent, to deliver to the searcher this shipping bill, with duplicates thereof, forfeits the sum of £20 (18 and 19 Vict., c. 96, § 10).

The shipping bill or bills, when filled up and signed by the exporter, or his agent, or the consignee of the ship, in such manner as the proper officer requires, and countersigned by the searcher, are the clearance for all the goods enumerated therein. If any of these goods consists of tar, spirits, or tobacco, the exporter, or his agent, must furnish to the searcher an account thereof, containing the number and description of the packages, and the respective quantities contained therein, which, when certified by the searcher, must accompany the ship; and this account has the same force and effect as

the cocket had, which was in use previous to the passing of the Customs Consolidation Act (16 and 17 Vict., c. 107, § 126). And if any goods, taken from the warehouse for exportation, are shipped, except with the authority or under the care of the proper officer of customs, and in such manner, by such persons, within such time, and by such roads or ways, as that officer permits or directs, these goods are forfeited (§ 129).

If any of the goods have been cleared to be exported for any drawback, and these goods are not duly exported to parts beyond the seas,—or are unshipped or relanded in any part of the United Kingdom (not having been duly relanded or discharged as short shipped under the care of the proper officers),—or are carried to any of the Channel Islands (not having been entered, cleared, and shipped to be exported or carried directly to these islands),—the same are forfeited, together with the ship, boat, or craft which may have been used in so unshipping, relanding, landing, or carrying these goods from the ship in which the same were shipped for exportation; and the master of that ship, and any person by whom or by whose orders or means these goods have been so unshipped, relanded, landed, or carried, or who aids, assists, or is concerned therein, forfeits a sum equal to treble the value of the goods, or a penalty of £100, at the election of the Commissioners (§ 133).

And now as to the clearance of the ship outwards. If there are on board any goods, being part of the inward cargo reported for exportation in the same ship, before clearance outwards of that ship from any port in the United Kingdom, the master must deliver to the searcher a copy of the report inwards of these goods, certified by the collector or comptroller; and if this copy is found to correspond with the goods so remaining on board, the searcher signs the same, to be filed with the certificates or cockets, if any, and the victualling bill of the ship (§ 141).

Before any ship can be cleared outwards from the United Kingdom, with any goods shipped or intended to be shipped on board, the master must deliver to the searcher a content of the ship, in the form given in the act (of which printed copies can be obtained), or to that effect, and containing the several particulars therein required, as far as the same can be known to him; and he must make and subscribe the declaration at the foot thereof, in presence of the collector or comptroller; and he must answer such questions as may be demanded of him, by the collector or comptroller, concerning the ship, the cargo, and the intended voyage. And, before clearance, the certificates, if any, must be delivered to the searcher, who compares the shipping bills with the content and these certificates, and files these certificates, copy of report inwards (if any) of goods

reported for exportation in that ship, and the victualling bill, with a label attached and sealed thereto, in the form given in the act, or to that effect. This label, when filled up, and signed by the searcher and the collector or comptroller, is, as to the goods comprised therein, the clearance and authority for the departure of the ship (§ 142).

If any goods, liable to duty on importation, or taken from the warehouse to be exported, or entitled to drawback on exportation, are enumerated in the ship's content, but are not duly shipped before the departure of that ship, or are not duly certified by the proper officer as short shipped, these goods are forfeited. Or if any goods, as before mentioned, are taken on board, but are not enumerated in the content, the master forfeits the sum of £5 in respect of every package of such goods. And if any goods duly shipped on board are landed at any other place than that for which they have been cleared, unless otherwise accounted for to the satisfaction of the Commissioners, the master forfeits a sum equal to treble the value of the goods so landed (§ 143).

If any goods are shipped, put off, or water-borne to be shipped, without being duly cleared, or otherwise contrary to the provisions of the Customs Consolidation Act, the same are liable to forfeiture (§ 144). And if any ship having cargo on board departs from any port without being duly cleared, the master forfeits the sum of £100 (18 and 19 Vict., cap. 96, § 11).

Thus far as to the lading of a cargo and the clearance of a ship outwards. But the ship may be to depart in ballast for her port of lading beyond the seas; and as to this, the Customs Consolidation Act enacts,—That, before any ship shall depart in ballast from the United Kingdom for parts beyond the seas, not having any goods on board, except stores from the warehouse borne on the victualling bill, or any goods reported inwards for exportation in that ship, the collector or comptroller clear the ship in ballast, by notifying that clearance, and the date thereof, on the victualling bill, and deliver the same to the master as the clearance of his ship; and the master must answer to the collector or comptroller such questions touching her departure and destination as may be demanded of him. Ships having only passengers with their luggage on board, and ships laden only with chalk or slates, are deemed to be in ballast; but if any ship, whether laden or in ballast, departs without being so cleared,—if she has on board any stores as before mentioned,—the master forfeits and pays the sum of £100 (16 and 17 Vict., c. 107, § 145).

Then, again, as to the boarding of ships by the customs' officers after clearance outwards, it is enacted,—That any officers of the customs can go on board any ship after clearance outwards, within the

limits of any port in the United Kingdom, or within four leagues of the coast thereof, and can demand the ship's clearance; and if there are any goods on board, in respect of which certificates are required, not contained in these certificates, or any stores not indorsed on the victualling bill, these goods or stores are forfeited. And if any goods contained in these certificates are *not* on board, the master forfeits the sum of £20 for every package or parcel of goods contained in these certificates, and not on board (§ 146).

If any officer of customs places any lock, mark, or seal upon any goods taken from the warehouse, without payment of duty, *as stores*, on board any ship or vessel departing from any port in the United Kingdom, and this lock, mark, or seal is wilfully opened, altered, or broken; or if any of these stores is secretly conveyed away, either while that ship or vessel remains at her first port of departure, or at any other port or place in the United Kingdom, or on her passage from one such port or place to another, before her final departure on her foreign voyage,—the master forfeits the sum of £20 (§ 147).

If any ship departing from any port in the United Kingdom, does not bring-to at the stations appointed by the Commissioners of Customs for the landing of officers from export ships, or for further examination previous to departure, the master forfeits the sum of £20 (§ 148). The time at which any goods are shipped on board an export ship, is deemed to be the time of exportation of these goods; and the time of the last clearance of an export ship, is deemed to be the time of departure of that ship (§ 149).

Let us now turn to the *Coasting Trade* of the United Kingdom. And here it will be proper to point out to you, in the first place, the difference between the expression "Home-Trade Ship," in the Merchant Shipping Act, and the expression "Coasting Trade," in the Customs Consolidation Act. The former expression—"Home-Trade Ship"—includes every ship employed or trading within the following limits:—The United Kingdom, the Islands of Guernsey, Jersey, Sark, Alderney, or Man, and the continent of Europe, between the river Elbe and Brest inclusive (17 and 18 Vict., c. 104, § 2). But the Customs Consolidation Act enacts, that all trade by sea, from any one part of the United Kingdom to any other part thereof, is deemed to be a coasting trade, and all ships, while employed therein, are deemed to be coasting-ships; and no part of the United Kingdom, however situated with regard to any other part, shall be deemed in law, with reference to each other, to be parts beyond the seas (16 and 17 Vict., c. 107, § 151).

No goods can be carried in any coasting-ship, except such as are laden to be so carried at some port or place in the United Kingdom; and no goods can be laden on board any ship to be carried coastwise,

until all goods, brought in that ship from parts beyond the seas, have been unladen. If any goods are taken into or put out of a coasting-ship, at sea or over the sea; or if a coasting-ship touches at any place over the sea, or deviates from her voyage, unless forced by unavoidable circumstances; or if the master of a coasting-ship, which has touched at any place over the sea, does not declare the same in writing, under his hand, to the collector or comptroller at the port in the United Kingdom where his ship first afterwards arrives,—the master forfeits the sum of £100 (§ 153).

If any goods are shipped, or water-borne to be shipped, to be carried coastwise; or are unshipped from any ship, arriving coastwise, on Sundays or holidays; or unless in the presence or with the authority of the proper officer of customs, or unless at such times and places as are appointed or approved by him for that purpose,—these goods are forfeited, and the master also forfeits the sum of £50 (§ 154).

The master of every coasting-ship must keep, or cause to be kept, a *cargo-book*, stating the names of the ship, the master, and the port to which she belongs, and of the port to which she is bound on each voyage; and, *at every port of lading*, there must be entered in this book, the name of that port, and an account of all goods there taken on board that ship, stating the descriptions of the packages and the quantities and descriptions of the goods therein, and the quantities and descriptions of any goods stowed loose, and the names of the respective shippers and consignees, so far as these particulars are known to him; and, *at every port of discharge of these goods*, he must note the respective days on which the same, or any of them, are delivered out of his ship, and the respective times of departure from every port of lading, and of arrival at every port of discharge (§ 155).

The master must, on demand, produce this book for the inspection of any officer of customs, who is at liberty to make any note or remark therein; and if, upon examination, any package entered in the cargo-book as containing foreign goods, is found not to contain such goods, this package, with its contents, is forfeited; or if any package is found to contain foreign goods not entered in the cargo-book, these goods are forfeited. If the master fails correctly to keep this cargo-book, or to produce the same, or if at any time there are found on board goods not entered in the cargo-book as laden, or any goods noted as delivered, or if any goods entered as laden, or any goods not noted as delivered, are not on board, the master forfeits the sum of £20 (§ 155).

Before a coasting-ship can depart from the port of lading, an account, with a duplicate thereof in the form given in the act (of

which printed copies can be obtained), or to that effect, and signed by the master, must be delivered to the collector or comptroller; and the collector or comptroller retains the duplicate, and returns the original account dated and signed by him. This account is the clearance of the ship for the voyage, and the transire or pass for the goods expressed therein; and if this account is false, the master forfeits the sum of £20. But whenever it appears expedient to the Commissioners, they can permit general transires to be given, under such regulations as they may direct, for the lading and clearance, and for the entry and unlading of any coasting-ship and goods; and this general transire can be revoked by notice in writing under the hand of the proper officer, delivered to the master or owner, or any of the crew on board (§ 156).

Within twenty-four hours after arrival of a coasting-ship at the port of discharge, and before any goods are unladen, the transire, with the name of the place or wharf where the lading is to be discharged, noted thereon, must be delivered to the collector or comptroller, who notes also thereon the date of delivery. If there are goods on board subject to any duty of excise, these goods must not be landed without the authority or permission of the proper officer of excise; and if any goods on board a coasting-ship arriving in Great Britain or Ireland from the Isle of Man, are the growth or produce of that isle, or manufactures of that isle from materials the growth or produce thereof, or from materials not subject to duty in Great Britain or Ireland, or from materials upon which the duty has been paid and not drawn back in Great Britain or Ireland, the same cannot be unladen until a certificate is produced to the collector or comptroller from the collector or comptroller at the port of shipment, that proof had been there made in manner required by law, that these goods were of such growth, produce, or manufacture, as the case may be; and if any goods are unladen contrary to this enactment, the master forfeits the sum of £20. If any goods are laden on board any ship in any port or place in the United Kingdom, and carried coastwise, or, having been brought coastwise, are unladen contrary to the Customs Consolidation Act, or any other act relating to the customs, these goods are forfeited (§ 157).

Any customs' officer can go on board any coasting-ship in any port or place in the United Kingdom, or at any period of her voyage, and search that ship, and examine all goods on board, and all goods then lading or unladen, and demand all documents which ought to be on board; and the collector or comptroller can require that all or any such documents shall be brought to him for inspection; and the master refusing to produce these documents on

demand, or to bring the same to the collector or comptroller when required, forfeits and pays the sum of £20 (§ 158).

The customs' duties which require to be performed by you as master before sailing on a voyage for parts beyond the seas, and in the coasting-trade, have thus been fully detailed for the purpose of enabling you to perform these duties yourselves, without the intervention of an agent, or of any other person. Previous to sailing, you have, of course, to pay the port-dues exigible for your ship, and also the light dues then payable; otherwise, if you sail without paying these, you may be held guilty of barratry. And, besides, you will bear in mind as to the light-dues, that every person appointed to collect these dues, collects all light-dues payable at the port or place where he is appointed; and that if the owner or master fails, on demand of the authorised collector, to pay the light-dues in respect of his ship, it is lawful for the collector, in addition to any other remedy which he or the lighthouse authority by which he is appointed may be entitled to use, to enter upon and distrain the ship and the goods, guns, tackle, or any other thing of or belonging to or on board that ship, and to detain these until the light-dues are paid; and if payment is not made within the three days next ensuing, he can, at any time during the continuance of non-payment, cause the same to be appraised by two sufficient persons or sworn appraisers, and thereupon sell the same, and apply the proceeds in payment of the light-dues due, with all reasonable expenses incurred,—paying any surplus to the owner or master (§ 17 and 18 Vict., c. 104, §§ 401, 402). And no officer of customs, at any port where light-dues are payable in respect of any ship, can grant a clearance or transire for that ship unless the receipt for her light-dues is produced to him (§ 400).

But I have now to direct you to the consideration of a matter, in which you and your owners are most particularly concerned, and which, as affecting both shippers and underwriters, and through them the owners, demands the utmost of your attention,—I mean the absolute seaworthiness, in all respects, of your ship at the time of sailing.

You will observe, that the usual stipulation in the charter-party, or memorandum of charter-party, as to the state of the ship, is, that she is "stiff, staunch, strong, well-apparelled, furnished, and provided, and every way fitted for the voyage;" and that, in the bills of lading signed by you, and in the policies of insurance, the vessel is described as "the good ship ——," which she cannot be unless she is in every respect seaworthy for the voyage. This seaworthiness is a warranty which is implied, that is, understood,—not expressed,—in all policies of marine insurance; and the ascertained

meaning of it is, that the ship must be in a fit state, as to repairs, equipment, and crew, *and in all other respects*, to encounter the ordinary perils of the voyage insured, *at the time of sailing upon it* (Per Parke B., in Dixon *v.* Sadler, 5 M. W., 414). As it is thus the general rule, that the ship must be seaworthy in all respects at the time of sailing, so it is another rule equally clear and distinct, that if the inability of the ship to perform her voyage becomes evident in a short time after sailing, the presumption is, that she had not been seaworthy when the voyage began (Per Lords Eldon and Redisdale, in Watson *v.* Clarke, 1 Dow, 344). And, from these two rules, it follows, as a necessary consequence, that if the ship is not seaworthy at the time of sailing,—from whatever cause this may arise, and though no fraud is intended,—the underwriters are discharged; for it is not necessary to inquire whether the owners act honestly and fairly in the transaction,—as the law is clear, that, however just and honest the intentions of the owner may be, if he is mistaken in the fact, and if in point of fact the vessel is not seaworthy, the underwriter is not liable (Per Lord Eldon, in Wilkie *v.* Geddes, 3 Dow, 60; and in Douglas *v.* Scougall, 4 Dow, 276).

From these authorities, you will clearly perceive of what paramount importance it is, that, at the time of the ship's sailing from port, she shall be completely seaworthy *in all respects*, for her intended voyage; and hence, you can also understand the gross absurdity there is, besides the imminent danger, of sailing on a voyage with any known or apparent deficiency or defect in the hull, externally or internally, or in the sails or rigging, with the intention that, when the vessel is fairly clear of the land, and the bustle of leaving has subsided into the ordinary routine of sea duties, these deficiencies or defects can be mended or patched up by the crew when more at leisure. You should never lose sight of the rule, that it is *the time of the ship's sailing* on the intended voyage, at which the ship must be seaworthy in all respects, and that if she is not *then* in that seaworthy condition, the insurances on ship and cargo are void; and that, if this inability of the ship to perform her voyage becomes apparent in a short time after sailing, without any adequate supervening cause, the law presumes this state of unseaworthiness to have been previously existing, on which account not only are the insurances on ship and goods void, but the freight for the voyage may be lost, and, in all probability your owners found liable in damages to the freighter. Take the following instance:—

By a charter-party, it was agreed by the shipowner, that the ship, being tight, stanch, and strong, and every way fitted for the voyage, should load at Sunderland a full cargo of coals, and, being so loaded, should therewith proceed to Constantinople for orders,

and deliver the cargo there, or at some other port in the Black Sea, being paid freight on the quantity delivered at certain stipulated rates—"one-fourth of the freight to be advanced to the owner's agent in London on the ship having sailed, less £5 per cent. thereon for assurance, interest, and commission." The ship sailed from Sunderland to save a spring tide, and anchored in the roads; but her rigging and equipment were then incomplete,—the shrouds and cables were not in proper condition,—the master and mate had not come on board,—part of her crew was absent,—and the master had not signed the bills of lading. While thus at anchor in the roads, the ship was lost; and the owner having brought an action against the charterer, for the one-fourth of the freight payable in advance on the ship having sailed, the charterer pled, that the ship did not sail on the voyage to Constantinople, in pursuance of the charter-party, as she was not then tight, stanch, and strong, and every way fitted for the voyage, and that, by reason of the premises, the ship and cargo were wholly lost. The Court of Queen's Bench held that, when the ship left the harbour of Sunderland, she had not commenced her voyage to Constantinople, her crew not being complete, —the master and mate not having come on board,—her shrouds and cables not being in proper condition for the voyage,—and, although the cargo was on board, the bills of lading had not been signed by the master;—that the ship left the harbour with the intention to anchor in the roadstead and lie there, to prepare for the commencement of the voyage, as it was more convenient so to prepare there, than while lying in the harbour;—that, although she had left the harbour without the intention of returning thither, she had left the harbour with the intention of *not commencing* the voyage till the necessary preparations should be completed;—that, when she crossed the bar, her intention unquestionably was, that being then unfit to proceed to sea, she should remain at anchor till the preparations for the voyage were complete, and that, before they were complete, she was totally lost;—and, therefore, that there had not been a sailing in terms of the charter-party, and that, when the ship was wrecked, she was only preparing to sail (Thomson *v.* Gillespy, 1 Jur., N. S., 779).

Now, let us stop here for a little, and make an observation or two on this case. And, first, in regard to the owner of the ship. He had entered into a charter-party, by which he bound himself that his ship should be tight, stanch, and strong, and every way fitted for the voyage,—that is, in all respects seaworthy; but the ship sailed out of port in an unseaworthy state, with the intention of her being made seaworthy for the voyage while at anchor in the roads, and, while she was in this unseaworthy state in the roads, she was

lost. Now, the direct consequence of this state of unseaworthiness was, that if the owner had insured the ship and freight, he would have no claim against the underwriters either for any part of the sums insured, or for a return of premium; but he would also lose the ship herself, and all her outfit and stores; and this loss of outfit and stores would alone be a considerable sum. And then, in regard to the charterer, he not only lost his cargo and the insurances upon it, but also his expected profits from the sale of the coals; and besides, if he was bound under a contract to deliver the coals, he was liable in damages to the party with whom he had contracted, for his failure to implement his bargain; and there seems little doubt, that the charterer would have an action against the owner of the ship to relieve him from these, or at least a part of these claims.

You cannot fail to observe, that all these disastrous consequences arose from the ship's leaving her port of loading, before she was in a proper state of seaworthiness to commence her voyage; and you must see not only the gross absurdity, but the great danger, of a ship leaving the harbour or sailing while in an unseaworthy state, and not in every respect fitted for the voyage, with the intention of rendering her so seaworthy and so fitted in a roadstead or during the first stages of the voyage.

But you may be naturally led to ask, What is the proper understood meaning of the terms, "*being seaworthy in all respects*"? Now, the plain answer is, that there is not, and cannot be, one fixed and uniform standard of seaworthiness applicable to all voyages, but that this standard of seaworthiness must vary according to the varying exigencies of different voyages; and, therefore, the general rule is, that the seaworthiness of the ship must be fully commensurate to the exigencies of the voyage on which she is about to depart. You must at once see, that one state of repair and of the necessary equipments, which would render a ship seaworthy for one description of voyage, or one course of trading, would be totally inadequate for another description of voyage or a different course of trading. But still, her state of seaworthiness must be such that she must be seaworthy in all respects *for the voyage on which she is about to sail.* Whether the standard of seaworthiness be higher or lower than is required for other and different voyages, there can be no doubt that the ship must be fully provided, and prepared for, and capable of encountering the exigencies of the voyage she is about to undertake. We are here speaking of the ship's seaworthiness at the commencement of her voyage, not of her state of seaworthiness at a subsequent or later period or stage of her voyage.

As the easiest method of shewing what is meant by a ship's being seaworthy in all respects, the plainest course will be to point

out instances in which ships, owing to existing deficiencies or defects, have been held not to be seaworthy. These deficiencies or defects may be in the hull, rigging, sails, tackle; in the inadequacy or incompetency of the master or crew; from being improperly or too heavy loaded; or from being inadequately provided with stores or provisions. Let us take these in their order:—

1. Unseaworthiness from deficiencies or defects in the hull. These deficiencies or defects are well illustrated in the three following cases, which were decided in the House of Lords.

In the first case, the voyage insured was "at and from St Andrews to Riga or St Petersburgh, and at and from either of these ports to Dundee or Newburgh." The vessel had been originally 80 tons burden, but had been so lengthened as to be 110 tons burden; in doing so, the mainhold beams in the centre had been cut and lengthened, but they were not supported by knees, which are usually placed in ships intended to carry cargo; she was also defective in her sails, rigging, and ground tackle. The ship having been lost on her homeward voyage,—in an action against the underwriters on the policy,—it was held, principally on the ground of the want of knees, that the ship was not seaworthy for the voyage when she left St Andrews (Watt *v.* Morris, 1 Dow, 32). In another case, the insurance was on the freight of the homeward voyage, at and from Honduras to London. The ship had lain at Honduras about five months, taking in a cargo of mahogany and logwood, and, during that time, she appeared to be in a seaworthy state, but having encountered a gale of wind the day after she sailed from Honduras, she was found making 10½ inches of water per hour; this leakiness continued and increased day by day for a week afterwards, at the end of which time she was making 3½ feet water per hour; and another gale coming on, she strained so much, that the master, fearing he might not be able to keep her afloat, bore away for Montego Bay in Jamaica. There the ship was surveyed, and the surveyors reported that they found her copper-sheathed and fastened, but the fastenings were decayed, that three of her beams were broken, the main beam in two places; that she was making at the rate of 18 inches water per hour, which they considered did not proceed from a single leak, but from the loose state of the ship throughout; and that she had evidently spread, and had not any knees, either fore or aft or otherwise, to support her lower deck; and that their opinion was, her upper decks had alone kept her together. And, on this evidence, it was held that, as nothing had occurred after she left Honduras to account for her being in this state, the ship had not been seaworthy when she sailed from Honduras (Parker *v.* Potts, 3 Dow, 23). And, in the third case, the

insurance was on the ship and freight, "at and from Leith to Pictou" in North America. Before the ship sailed from Leith, she had been put into the hands of ship carpenters there, who did repairs to her outer coating to the amount of about £280, which they certified, comprised every repair that was deemed necessary for enabling her to proceed on her voyage to Pictou. This was in April, and she sailed on 23d May. On the 6th and 7th June, she encountered a severe gale, in which she sprung her bowsprit, and began to make so much water that the crew could not keep her free with both pumps; and the master, in distress, was obliged to bear up for the first port he could make, which was Greenock. There she was surveyed, and it was found that the ironwork in general was very much decayed and wrought loose; that the timbers and planks, generally speaking, were sound, but decayed about the bolts and nails, which in several places were quite gone; that several of the lower-deck beams and knees were decayed and sprung, and one plank below the lower-deck beams, on each side, was decayed and sprung; and that the bowsprit was sprung and the stem wrought loose, on account of the decayed iron and labouring of the ship at sea. It was held, that the ship was manifestly not seaworthy when she sailed on the voyage, whatever might have then been the opinion of the owners and the carpenters who repaired her (Douglas *v.* Scougall, 4 Dow, 269).

2. Unseaworthiness from deficiencies or defects in the rigging, sails, or tackling. These being comprehended under the implied warranty of seaworthiness, must all be complete and in good order at the time of sailing.

Thus, a ship was insured "at and from Jamaica to London." At the time of sailing, her stern sails were in good order, but her maintop-gallant and studding sails, used in light breezes, were extremely rotten and unserviceable. It was held, that the ship was unseaworthy, though she went down in a hurricane in which these sails would have been useless (Wedderburn *v.* Bell, 1 Camp. 1). So also, where a ship sailed with the cable of the small bower anchor so worn and decayed as to be unfit for service, and with the best bower anchor too light and short in the shank for a vessel of her tonnage, it was held that she was unseaworthy (Wilkie *v.* Geddes, 3 Dow, 57). But where a ship was insured in a mutual insurance society (the policies of which are *time policies*, but in which the same implied warranty of seaworthiness is understood), it was a condition, that all ships were to be inspected and approved of by a majority of the insurers before admission; that all ships should be well found, &c., and otherwise in a seaworthy state, as to the committee or their inspector should, from time to time, seem proper;

that vessels should have a certain specified quantity of rope or chain cables according to their several burdens, "and all chain cables to be properly tested." Ships were to be subject to survey by the committee or their inspector at certain specified times, and, in case of noncompliance with any orders as to repairs made by the committee or inspector, the parties neglecting were to be held as uninsured. In an action by an owner upon a policy of insurance by the society, he averred, generally, that he had performed all things in the policy on his part, and that he had complied with all the conditions, &c.; and it was held, that the testing of the chain cable was not a condition essential to the validity of the insurance, but only a direction to the committee; and that, if the testing of the chain cable had been a condition essential to the insurance, the non-performance of the testing was of the nature of unseaworthiness (Harrison *v.* Douglas, 3 Ad. & Ell., 396).

3. Unseaworthiness arising from the inadequacy or incompetency of the master or crew. And here, again, the general rule is, in reference to freighters and underwriters, that the ship, to be seaworthy, must have a master of competent nautical skill, with a crew sufficient for the navigation of the voyage, and that a pilot must be on board wherever a pilot is required by law.

As to the master, it may be assumed that, having passed his examination, he is thus far well acquainted with seamanship and nautical affairs in general. But the questions still remain, What is his knowledge of hydrography, or of the *localities* (if I may so speak) and of the *casualties* of the sea in the course of his voyage? and, in particular, has he a competent knowledge of the situation and appearance *seaward* of the different ports which may occur in the course of that voyage? and, especially, of the proper approaches to, and the distinguishing *seamarks* of, his port of destination? This knowledge you must possess; and you must be fully capable of distinguishing, *by sight*, your port of destination from each and all of the neighbouring ports, or of the ports on the same coast. You must have a reasonably competent knowledge, not only of the usual course of navigation for the voyage, but also of the local situation and peculiarities of the port at which that voyage is to terminate. Take a lesson from the following case:—

A ship was insured on a voyage "from Cork to the ship's loading port or ports on the coast of Spain, within the Straits of Gibraltar, *including Tarragona, but not higher up the Mediterranean.*" Tarragona was at that time in possession of the Spanish Allies, and it was the intention of the master to go into that port; but, being entirely ignorant of the coast, he passed that port in the night, and, for it, mistook Barcelona, which is higher up the Mediterranean, and was

then in possession of the French ; and, in endeavouring to enter that port, he was captured. It was held, that the implied warranty to provide a master of reasonably competent skill, had not been complied with, by sending out one who was totally ignorant of the one port and of the other,—of Tarragona and of Barcelona,—when it was the immediate and prominent object of the policy to distinguish between them (Tait *v.* Levi, 14 East., 481).

Now, pause for a moment to reflect on the disastrous consequences, which would flow from this worse than culpable ignorance of the man who was master of that ship. Not only were the insurances upon the ship, freight, and cargo (if there was a cargo on board) quite unavailable to the owners of each ; but the ship and cargo were irretrievably lost to their owners ; and, besides, the master himself and his crew were prisoners of war in the hands of the enemy,—and all this from the inexcusable ignorance of the master. How could this man excuse himself in his own mind, when he must have been quite conscious of his utter incapability of discharging the important trust reposed in him? And, although a similar loss from capture may not be apprehended at the present day, yet equally ruinous consequences may ensue from the ignorance of the master of the coasts on which he will have to sail, and of the port or ports to which he is bound.

Further, a ship is not deemed seaworthy for a long voyage, unless there is some person on board, qualified to take the place and discharge the duties of the master, in the event of the master becoming incapacitated during the voyage. Thus, where an insurance was on a voyage from "Mauritius to London;" but, at sailing from Mauritius, the master was very ill, and, next day, finding himself incompetent, from increased illness, to continue the charge of the ship, he inquired at his two mates whether they could take the ship to England, but finding no one competent to undertake it, he put back:—it was held, that the ship on sailing was not sufficiently manned, when, in the event of any accident happening to the master, there was no one else on board able to perform his duties (Clifford *v.* Hunter, 1 M. & M., 103).

Next as to the crew, the general rule is,—that when the ship sails, there must be a crew of competent skill, sufficient to navigate her on the intended voyage, adequate to discharge the usual duties, and to meet the usual exigencies of that voyage. By the charter-party the owner binds himself, not only that the ship shall be stiff, stanch, and strong, but also that she shall be provided with men and mariners sufficient and able ; and it is one of the implied or understood warranties in the policy of insurance, that the ship shall be well and sufficiently manned for the voyage. Consequently, it is the indispensable duty of the owner or master to have, when the ship sails

from her port of loading, a sufficient crew of competent skill *engaged for the whole voyage*. To shew you the necessity of this, take the following instance:—

An insurance was effected on a ship and goods on the homeward voyage "at and from Cuba to Liverpool," without any leave given to touch and stay at. Some of the outward crew having been lost by sickness and desertion, and the master being unable to make up his full complement of *ten* men for Liverpool, the ship sailed from Cuba with only *eight* men for Liverpool, and *two* for Montego Bay, Jamaica, at which place he touched, landed the men, and having procured others to supply their place, then proceeded on the voyage to Liverpool, and was lost. It was held, that the ship was not seaworthy when she sailed from Cuba, *for a voyage to Liverpool*, as she ought then to have had on board, her full complement of ten men engaged for the whole voyage (Forshaw *v.* Chabert, 3 B. & B., 158).

And, again, as to the necessity of having a pilot on board, the general rule is, that the ship is not seaworthy at the outset unless there is a pilot on board, where, by law or usage, a pilot is requisite (Law *v.* Hollingsworth, 7 T. R., 160). Of course, this may not hold in regard to the ship's *home-port;* when the master or mate is possessed, under § 340 of the Merchant Shipping Act, of a pilotage certificate applicable to that port, the having a pilot on board in coming out of it may not be required; but at any other port, the necessity of having a pilot *in coming out* still remains, and it is then so easy to obtain the services of a regularly licensed pilot. And you will understand what is now said, has only reference to the ship's having a pilot on board at the commencement of her outward voyage, as an ingredient of her seaworthiness. The General Pilotage Laws will come under consideration in the next letter.

2. A ship may be seaworthy with respect to her hull, sails, rigging, and tackling, and the master and crew, yet she may be unseaworthy from her being overloaded. In one case, an insurance was effected "on ship and outfit," on a voyage "at and from London to Bahia," and the ship sailed from London on her voyage, loaded with iron; but, in going down the Channel, the ship encountered bad weather, and laboured and strained so much from being overloaded, that it became evident she could not continue her voyage with safety, unless she was lightened. Thereupon the underwriters consented to her going into a port and discharging part of her cargo; and having done so, she sailed from that port in a state of seaworthiness, and a loss subseqnently occurred, wholly unconnected with her state of unseaworthiness *when she sailed from London*, and for this loss the underwriters were found liable (Weir *v.* Aberdein, 2 B. & A., 320). But it is plain, that, had the ship

continued her voyage in the same state of unseaworthiness as when she sailed from London, and had the underwriters not agreed to her going into a port and discharging part of her cargo so as to render her seaworthy, they were discharged of all liability from the time of her sailing in an unseaworthy state, in consequence of her being overloaded.

3. Another ground of unseaworthiness may arise from her having sailed without being duly supplied with stores and provisions. It is an important element in the seaworthiness of a ship, that she be provided, *at sailing*, with a supply of the proper stores and provisions fully sufficient for the voyage; and her not being so provided, must proceed from the carelessness or parsimony of the master or owners. By the Customs Consolidation Act, the master can, upon application made by him, receive from the searcher an order for the shipment of such stores as are required and allowed by the collector or comptroller for the use of his ship, with reference to the number of the crew and passengers on board, and the probable duration of the voyage on which she is about to depart (16 and 17 Vict., c. 106, § 140). And I need scarcely recall to your recollection, that, in the agreement with your seamen, there must be inserted, by the Merchant Shipping Act, "a scale of the provisions which are to be furnished to each seaman" (17 and 18 Vict., c. 104, § 149); that if, during the voyage, the allowance of any of these provisions so stipulated for is reduced (unless by way of punishment, as had been agreed on), or if it is shewn that any of these provisions are, or during the voyage have been, bad in quality and unfit for use,—then, if his allowance is reduced by any quantity not exceeding one-third, he receives a sum not exceeding 4d. a-day; if by more than one-third, 8d. a-day; and for bad quality, a sum not exceeding 1s. a-day, as compensation for this reduction or bad quality, according to the time of its continuance (§ 223). And that, upon any three or more of the crew complaining to the proper officials, the provisions or water can be examined, and if found to be of bad quality, unfit for use, or deficient in quantity, should the master not provide other proper provisions or water, or supply any deficiency in either, or use any provisions for water so condemned,—he, in each case, incurs a penalty not exceeding £20 (§ 221).

Connected with a sufficient supply of stores and provisions for the voyage, is the duty of the master or owner to provide a proper supply of medicines, medical stores, and medicaments, suitable to accidents and diseases arising on sea voyages, according to the scale published from time to time by the Board of Trade, in terms of § 224 of the Merchant Shipping Act. It has been said by very eminent authority, that an owner is as much bound to shew that he had provided proper medicines and necessaries for the voyage, as he

was to establish the tightness of his ship (Per Lord Eldon, in Woolf *v.* Claggett, 4 Esp., 258). And it has been held, that it is the duty of the owner to have on board a proper supply of medicines, and that, although the act imposes a penalty recoverable as a specific punishment for the breach of that duty *as to the public*, yet the seamen sustaining private injury from a breach of that statutable duty, are entitled to recover damages (Conch *v.* Steel, 18 Jur., 515).

In addition to what has been already noticed as necessary to render the ship seaworthy, you will also attend that the Merchant Shipping Act requires *all British ships* to be provided with boats according to their tonnage and the class to which they belong.

It is enacted, that no decked ship (except steam-tugs and ships engaged in the whale-fishery) can proceed to sea from any place in the United Kingdom, unless she is provided, according to her tonnage, with boats, duly supplied with all requisites for use, not fewer in number nor less in their cubic contents than the boats and cubic contents of which are given in the table S, for the class to which the ship belongs; that no ship carrying more than ten passengers, can proceed to sea from any place in the United Kingdom, unless, in addition to these boats, she is also provided with a life-boat furnished with all requisites for use; and that no ship so carrying passengers can proceed to sea, unless she is also provided with two life-buoys; this life-boat and these life-buoys being so kept as to be at all times fit for use (§ 292).

If any ship so required to be provided with boats and life-buoys, proceeds to sea without being so provided therewith; or if any of these boats or life-buoys are lost or rendered unfit for service in the course of the voyage, through the wilful fault or negligence of the owner or master; or in case of any of these boats or life-buoys being accidentally lost or injured in the course of the voyage, the master wilfully neglects to replace or repair the same on the first opportunity; or if these boats and life-buoys are not so kept as to be at all times fit and ready for use,—then, if the owner is in fault, he incurs a penalty not exceeding £100, and if the master is in fault, he incurs a penalty not exceeding £50 (§ 293).

And no customs' officer can grant a clearance or transire for any ship so required as before, to be provided with boats or with life-buoys, unless she is duly so provided; and if she attempts to go to sea without this clearance or transire, any customs' officer can detain her until she is so provided (§ 294).

The foregoing observations as to the seaworthiness of the ship, apply only to the state of her seaworthiness at the commencement of her outward voyage. It is also necessary, that before sailing, the ship is provided with the proper means and materials for

exhibiting the lights and using the fog-signals required by § 295 of the Merchant Shipping Act, and by the Admiralty Notice of 1st May 1852. This subject will be more fully considered afterwards, when we come to treat of collision; and here, it is only necessary to direct your attention to having your ship so supplied before sailing.

Before closing this letter, it will be proper to notice two powers, with both or either of which, under the Merchant Shipping Act, you may be intrusted previous to sailing. These are a power to mortgage or a power to sell.

The Merchant Shipping Act provides (§ 76), that if any registered owner of a ship or share is desirous of disposing of that ship or share, by way of mortgage or sale, out of the country or possession in which her port of registry is situate, he can apply to the registrar, who can enable him to do so by granting the certificates after mentioned, called respectively "certificates of mortgage" or "certificates of sale," according as these give a power to mortgage or a power to sell.

These certificates are in the forms given in the schedules annexed to the act, and must contain a statement of the several particulars directed to be entered in the register-book, as will be immediately noticed, and in addition thereto, an enumeration of any registered mortgage or certificates of mortgage or sale, affecting the same ship or shares in respect of which the certificates are given (§ 79).

The particulars now referred to, which the person applying for these certificates must state to the registrar, and which are entered by him in the register-book previously to any certificate of mortgage or sale being granted, are the following:—

1. The names of the persons by whom the power mentioned in the certificate is to be exercised, and in the case of mortgage the *maximum* (the greatest) amount of charge to be created, if it is intended to fix a *maximum;* and, in the case of a sale, the *minimum* (the lowest) price at which a sale is to be made, if it is intended to fix a *minimum.*

2. The specific place or places where this power is to be exercised, or if no place be specified, then, that it is to be exercised *anywhere*, subject to the provisions to be afterwards noticed; and,

3. The limit of time within which this power may be exercised (§ 77). But no certificate of mortgage or sale can be granted, so as to authorise any mortgage or sale to be made, at any place within the United Kingdom, if the port of registry is within the United Kingdom,—or at any place within the same British possession, if the port of registry is within a British possession,—or by any person not named in the certificate (§ 78).

As to *certificates of mortgage*, the following rules must be observed :—

1. The power must be exercised in conformity with the directions contained in the certificate.

2. A record of every mortgage made under the certificate, must be indorsed thereon by a registrar or British consular officer.

3. No mortgage honestly made under this certificate, can be impeached, by reason of the person by whom the power was given dying before the making of the mortgage.

4. Whenever the certificate contains a specification of the place or places at which, and a limit of time (not exceeding twelve months) within which, this power is to be exercised, no mortgage honestly made to a mortgagee, without notice, can be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given.

5. Every mortgage so registered on the certificate of mortgage, has priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register-book. If there are more mortgages than one so indorsed, the respective mortgages claiming under the same are entitled,—notwithstanding any notice, express, implied, or constructive,—the one before the other, according to the date at which a record of each instrument is indorsed on the certificate, and not according to the date of the instrument creating the mortgage.

6. Subject to the foregoing rules, every mortgagee, whose mortgage is registered on the certificate, has the same rights and powers, and is subject to the same liabilities, as he would have had and been subject to, if his mortgage had been registered on the register-book, instead of on the certificate.

7. The discharge of any mortgage so registered on the certificate, can be indorsed thereon by any registrar or British consular officer, upon the production of the same evidence as is required to be produced to the registrar on the discharge of a mortgage in the register-book; that is, on the production of the mortgage deed, with a receipt for the mortgage money thereon, duly signed and attested (§ 68). Upon this indorsement being made, the estate (if any) which passed to the mortgagee, vests in the same person or persons in whom the same,—having regard to any intervening facts and circumstances,—would have vested if no such mortgage had been made.

8. Upon the delivery of any certificate of mortgage to the registrar by whom it was granted, after he records in the register-book, in such manner as to preserve the priority, any unsatisfied mortgage registered thereon, he cancels the certificate, and enters the fact of

this cancellation in the register-book; and every certificate so cancelled is void to all intents.

As to *certificates of sale*, the following rules must be observed:—

1. No certificate of sale can be granted except for the sale of an entire ship.

2. The power must be exercised in conformity with the directions contained in the certificate.

3. No sale honestly made to a purchaser for a valuable consideration, can be impeached, by reason of the person by whom the power was given dying before the making of the sale.

4. Whenever the certificate contains a specification of the place or places at which, and a limit of time (not exceeding twelve months) within which, the power is to be exercised, no sale honestly made to a purchaser for valuable consideration, without notice, can be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given.

5. Any transfer made to a person qualified to be the owner of British ships, must be by bill of sale, in the form annexed to the act, or as near thereto as circumstances permit.

6. If the ship is sold to a party qualified to hold British ships, the ship must be registered anew; but notice of all mortgages enumerated on the certificate of sale, must be entered in the register-book.

7. Previously to this registry anew, there must be produced to the registrar required to make the same, the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry of the ship.

8. The last-mentioned registrar retains the certificates of sale and registry, and, after having indorsed on both of these an entry of the fact of a sale having taken place, he forwards these certificates to the registrar of the port appearing on them to be the former port of registry of the ship, and, thereupon, this last-mentioned registrar makes a memorandum of the sale in his register-book, and the registry of the ship in that book is considered as closed, except as far as relates to any unsatisfied mortgages, or existing certificates of mortgage entered therein.

9. On this registry anew, the description of the ship in her original certificate of registry, can be transferred to the new register-book without her being resurveyed, and the declaration to be made by the purchaser, is the same as is required to be made by an ordinary transferee.

10. If the ship is sold to a party *not qualified* to be the owner of a British ship, the bill of sale of the ship, the certificate of sale, and the certificate of registry, must be produced to some registrar or consular officer, who retains the certificates of sale and registry, and,

having indorsed thereon the fact, of that ship having been sold to persons *not qualified* to be the owner of British ships, he forwards these certificates to the registrar of the port appearing on the certificate of registry to be the ship's port of registry. Thereupon, this last-mentioned registrar makes a memorandum of the sale in his book of registry, and the registry of the ship in this book is considered as closed, except so far as relates to any unsatisfied mortgages, or existing certificates of mortgage entered thereiu.

11. If, upon a sale made to an unqualified person, defanlt is made in the prodnction of these certificates, as now mentioned, this unqualified person is considered by British law as having acquired no title to or interest in that ship ; and the party upon whose application the certificate of sale was granted, and the persons exercising the power, each incurs a penalty not exceeding £100.

12. If no sale is made in conformity with the certificate of sale, that certificate must be delivered to the registrar by whom it was granted ; and, thereupon, he cancels it, and enters the fact of this cancellation in the register book ; and every certificate so cancelled is void to all intents (§ 81).

The registered owner, for the time being, of any ship or share in respect of which a certificate of mortgage or sale has been granted, specifying the place or places where the power so given is to be exercised, can, by an instrument under his hand, in the form in the schedule annexed to the act, or as near thereto as circumstances permit, authorise the registrar by whom that certificate was granted, to give notice to the registrars or consular officers, at such place or places, that that certificate is revoked, which notice is given accordingly. All registrars or consular officers receiving this notice record the same, and exhibit it to all persons who apply to them, for the purpose of effecting or obtaining a mortgage or transfer under that certificate of mortgage or sale. After this notice is recorded, the certificate is deemed,—so far as concerns any mortgage or sale to be thereafter made at that place,—to be revoked and of no effect ; and the registrar or consular officer recording this notice, must thereupon state to the registrar by whom the certificate was granted, whether any previous exercise of the power to which it refers has taken place.—I am, &c.

LETTER V.

On clearance at Custom-house, and before sailing, ship must be provided with boats, life-buoys, lights, and fog-signals—Master must be provided with copies of charter-parties, &c.—With proper nautical instruments, and correct charts—Commencement of voyage—Time of sailing in charter-party and policies of insurance—Meaning of words "to sail on or before" a day fixed—Instances as to—Warranties "to sail," "to depart," or "to sail from"—Examples of—Meaning of the words "to leave," "not to sail after" a certain day—Cases under these terms—Practical results drawn from these cases—What is a "sailing" under a charter-party, with reference to the state of the ship—Meaning of "final sailing"—Necessity of having qualified pilots—Appointment of qualified pilots—Licence of pilot, and production of—Penalties for refusal to produce—Boats and ships for pilotage service—Characteristics and requisites of—Flag to be exhibited by qualified pilot—General rights, privileges, and remuneration of pilots—Master must declare draught of water to qualified pilot—Penalty on unqualified pilot—When unqualified pilot can take charge—General rules as to compulsory pilotage—Pilots for passenger ships—Certificate for master or mate of—Persons liable to pay pilotage dues—Offences of qualified pilots, and punishments of—Trinity-house pilots—Trinity-house districts—Publication of names of pilots—Bond by—Renewal of licences—Compulsory pilotage in London district, and Trinity-house out-port districts—Number of pilots to be in readiness—Compulsory pilotage (Trinity-house)—Penalty on master not making signal, &c.—Ships exempted—Pilotage dues payable—Difference between master and pilot as to, how to be settled—Saving clause as to owners or masters—Meaning of.

GENTLEMEN,—Having obtained the necessary Custom-house documents, and having made the ship seaworthy in all respects, and having provided her with the statutory number of boats, with a life-boat and life-buoys, and with the proper materials for the exhibition of lights and for using fog-signals, as required by the 292d, 293d, and 294th sections of the Merchant Shipping Act, you should also, in voyages over the sea, have (as has been previously observed) copies of the charter-parties, or memorandums of charter-party, and of the policies of insurance on both ship and goods; and, what is more immediately connected with the navigation of the ship, and the course of the voyage, you should be very careful that, for a foreign voyage, your nautical instruments are in proper condition,—the compasses duly adjusted and corresponding,—the chronometer properly rated or rectified according to Greenwich time,—the day and night glasses duly cleaned and in serviceable order,—and the log and deep-sea lines fit for service. And, in addition to all these, you ought to have the most recent, or, at all events, correct charts of the course of the voyage.

Assuming, then, that all things are ready and fit for sea, as regards the ship, the cargo, the crew, the stores, and provisions, and all the necessary appurtenances and appointments, now comes the actual commencing of the voyage,—the breaking ground for the pur-

pose of proceeding to sea, and so over the sea to the port of destination. According to the universal practice of modern times, the master is the sole judge of the proper time for raising the anchors, hoisting sail, and proceeding on the voyage, so be that he do not sail in an adverse wind, or in stormy or tempestuous weather.

But, here again, you must attend to the special terms of your charter-party and of the policies of insurance. The usual terms of the former are, that the ship shall sail *on* or *before* a certain day, or with the first fair wind *after;* and, in policies of insurance, it is very common to insert a precise day, *on* or *before* which, or *after* which, or *not after* which, the voyage must be commenced. And here it is intended to direct your attention to one or two cases, in which each of these modes of expression has been used, and to the effect which has been given to such terms. And you will bear in mind that a condition or warranty "*to sail*" always means "*to sail on the voyage agreed on or insured;*" and this is complied with only when, on or before the day fixed, the ship has actually broken ground *in a state of complete fitness and preparation* for pursuing her voyage, as has been described in the preceding letter, without anything further being required, and with the *sole intention* of forthwith prosecuting that voyage (1 Arn., 595).

The meaning of the expression "to sail on or before" a day fixed, will be best illustrated by the following cases. Where parties, by a charter-party, agreed that the ship should proceed to Trieste, and there load a full and complete cargo of wheat, and the condition was, —"the vessel to sail from *England on or before the 12th January next.*" In an action against the merchant for not providing this full and complete cargo at Trieste, it was held, that the sailing of the ship from England, on or before the day fixed, was a condition, the performance of which the owners had to prove before the merchant could be liable to them in damages for not providing a cargo at Trieste (Glaholm *v.* Hayes, 2 Scott. N. R., 471). And where a ship was insured, "at and from Portneuf (about thirty miles above Quebec, on the St Lawrence) to London," under a warranty to sail "on or before the 28th October." On 26th October, the ship, having completed her loading, dropped down the river from Portneuf to Quebec (being the first place at which she could obtain her clearances), with a crew, though sufficient for the river navigation, not sufficient for her voyage across the Atlantic. She arrived at Quebec on the evening of the 28th, but did not complete her crew nor obtain her clearances at the Custom-house there, till the 29th, and she did not actually leave the port of Quebec, till the 30th. It was held, that the ship's dropping down from Portneuf without her sea complement of men, was clearly not a beginning *to sail on the voyage*,

but only a sailing *preparatory to the voyage* (Ridsdale *v.* Newenham, 3 M. & S., 456).

So also, where the policy was, "at and from Surinam, and all or any of the West Indian islands (except Jamaica) to London," and the warranty was, "to sail on or before 1st August." The ship sailed from Surinam, where she had cleared out, *completely loaded and provisioned for the homeward voyage, before the day specified,* and thence proceeded to Tortola (which was not out of her usual course to England, and was the general rendezvous for convoy) in order to join convoy; and she finally sailed from Tortola with convoy after the 1st August. It was held, that the ship had satisfied the warranty by sailing from Surinam, her loading port, completely loaded and provisioned, before the 1st August;—for, as Surinam was the ship's port of loading, it was the same as if that place only had been mentioned as the point from which the voyage was to commence (Wright *v.* Shiffner, 11 East, 515). But, where the insurance was "at and from Tobago to London," with a warranty "to sail on or before the 10th August;"—or on 9th August, the ship took out her clearances for London on the voyage insured, and, on the 10th, had finally completed her loading, and got her passengers on board. At this time she was moored in Tobago Bay, with a bower anchor and a stream anchor, and there was no impediment to her sailing had the wind permitted; in fact, on that day, the stream anchor was raised, some of the sails were set, and the ship moved forward about thirty fathoms by heaving in that extent of the cable of the bower anchor. When, however, the bower anchor itself was about to be heaved, it was observed that a heavy swell was setting into the bay, so that, if the ship had departed that day, it was feared she would be lost in getting out, and, therefore, the ship lay where she was till next morning, the 11th, when she got underweigh, and finally left the port, having had no communication with the shore after the morning of the 10th. It was held, that this was not a compliance with the warranty, as, in order to comply with the warranty, the ship must be *actually on her voyage* on the day specified (Nelson *v.* Salvador, D. & L., 219).

You have thus seen that, under a general warranty "*to sail*," a ship is held to have sailed when she first breaks ground, all prepared to prosecute her voyage; but if the words in the warranty are "*to depart*," these words require a different construction, viz., *that the ship must be out of port and at sea by the given day.* As, where a ship was insured, warranted *to depart from* Memel, her port of loading, "on or before the 15th September;"—the ship had completed her loading, obtained her clearances, and sailed on the 9th; but, in consequence of the wind changing, she could not get out of

harbour, and was obliged to come to anchor ;—on the 15th she was still in port, and was detained in the mouth of the harbour till after that day :—it was held that the warranty was not complied with (Moir *v.* Ro. Ex. Ass. Co. 3 M. & S., 461).

If the words in the warranty are "*to sail from*," the very same construction is given to them as to the words "*to depart.*" Thus, where the insurance was, "at and from Demerara to London," "warranted *to sail* from Demerara on or before 1st August ;"—the ship was of small burden, and she was then lying in the river of Demerara opposite the town, *that being the proper and usual place of loading and clearing out* for ships of her tonnage ; having there completed her loading, and obtained her clearances on the 1st August, she unmoored and dropped down the river to a place beyond its mouth ; outside, about three miles beyond the river's month, a shoal commences, and the ship did not get to the outside of this shoal till the 3d August, soon after which she was lost :—it was held, that as the ship was of small burden (large vessels taking in only part of their cargo in the river, and not completing their cargo or obtaining their clearances until outside of the shoal), and as she had been completely loaded and cleared ont at the usual place for vessels of such tonnage, and had dropped down the river beyond its mouth on 1st August, nothing further being then required to be done by a ship of her size before proceeding on her sea voyage, she must be considered as having "sailed from Demerara" on that day, within the meaning of the warranty (Lang *v.* Anderdon, 3 B. & C., 495).

But, even in a charter-party, the words "*to leave*" a certain port do not mean "*to sail from*" that port. As, in a charter-party, it was a stipulation that the ship should "leave and proceed from Amsterdam with all convenient speed to Liverpool, to leave Amsterdam not later than March ;" on 30th March, the ship, with a part of her ballast on board, quitted the dock of Amsterdam, and on the same evening reached the entrance of the North Holland Canal ; on the 31st, she arrived at Alkmaar, and stayed there during the 1st and 2d April, being engaged there taking in the remainder of her ballast ; on the 3d, she set sail, and left Nieuve Diep, having completed her crew there on the 9th, and on the 17th arrived at Liverpool :—it was held that the words "leave Amsterdam," did not mean "sail on her voyage from Amsterdam," and that, therefore, the agreement in the charter-party had been fulfilled (Van Baggen *v.* Baines, 9 Exch., 523).

Where a ship was insured "*at and from New York to Quebec*, during her stay there, and from thence to the United Kingdom, the ship being warranted to sail from Quebec on or before the 1st November ;"—the ship sailed on 15th October from New York on her

voyage to the United Kingdom by way of Quebec, and, whilst on such voyage, and before her arrival at Quebec, she struck on certain rocks and was totally lost; the underwriters pled, that during the whole of the 1st November, the ship was at sea proceeding on her voyage between New York and Quebec,—that the loss took place several days after the 1st November, and whilst the ship was still proceeding on the voyage between New York and Quebec,—that the ship did not sail from New York till the 15th October,—and that the time between that day and the 1st November was not, at that season of the year, reasonably sufficient to comply with the warranty to sail from Quebec on or before 1st November:—it was held that, according to the true construction of the warranty, there was no limitation of time as respected the voyage from New York to Quebec, and that, therefore, the underwriters were liable; but that, as to the voyage from Quebec to the United Kingdom, the underwriters were not responsible unless the ship had sailed from Quebec on or before the 1st November (Baines *v.* Holland, 10 Exch., 802).

From these cases, you can understand the distinction which there is between the words "to sail" simply, and the words "to depart," or "to sail from," on or before a certain day; the former expression meaning, that the ship shall sail, *by breaking ground*, in all respects seaworthy, and all prepared to prosecute her voyage, on or before the given day; but the latter expressions meaning, that the ship shall not only sail with all complete for the voyage, but that she shall *actually be at sea* on or before that day. Let us now proceed to consider the expression "*not to sail after*" a certain day; and here again, the general rule prevails, that the ship, furnished and prepared in all respects, must be in the prosecution of her voyage *on the day named.* The application of this rule will be evident from the three following cases, which all arose on *time policies.*

In one case, a ship was insured, under a warranty "not to sail for British North America" *after the 15th day of August.* On the 10th, the ship, then lying in the Custom-house Dock, Dublin, was chartered for a back voyage to Dublin, and great exertions were made to get her ready by the 15th, on account of the warranty. On the morning of the 15th, *being then in all respects ready for sea*, she was cleared at the Custom-house, and, on the same day, was hauled out of dock into the river Liffey, for the purpose of proceeding on her voyage to Quebec. On that day, the wind was blowing right up the river, so dead against the ship that no sail could be set; but, nevertheless, she was *warped* down the river till the tide ebbed, and then she took the ground. Next day, the wind being still right against her, she was warped down to a point, beyond which her further progress *in that way* was impossible, and, there, she again took

the ground at the ebb; the intention in so hauling out of dock and warping down the river was, to put the ship in a better position for the prosecution of her voyage, and not merely and solely to fulfil the warranty; and on the next day, the 17th, the wind shifted, and she immediately set sail and proceeded to sea on her voyage:—it was held, that the facts clearly shewed, that *the ship was in the prosecution of her voyage on the 15th August*, she having on that day made a movement, though in the river, *for the purpose of proceeding to sea, and over the sea, to North America* (Cochrane *v.* Fisher, 1 C. M. & R., 809).

But, in another case, the insurance was in an insurance association, one of the rules of which was, "that vessels *should not sail* to certain ports of North America from ports in Ireland after the 1st September;" and another, that "the *time of clearing* at the custom-house should be deemed the time of sailing, *provided the ship was then ready for sea*." The ship was then lying in the Ballyshannon river, within the limits of the port of Sligo, under a charter to sail to Miramichi, New Brunswick (a port within the rule first before quoted), and she was cleared at the Sligo custom on 29th August. At that time, she had the whole of her stores and provisions on board, but had in only 15 tons of ballast instead of 50, which quantity she required to cross the Atlantic in safety: she could not have crossed the bar of the Ballyshannon river with a greater weight of ballast, but boats had been engaged, and, on the morning of the 1st September, were waiting outside the bar, to complete the ballasting directly the ship had crossed, and this could have been done before dark on the 1st; the ship had previously dropped down the river to within a mile of the bar, and on the morning of the 1st, she endeavoured to cross it, but struck twice before she succeeded in doing so. On getting outside the bar, the master, instead of then taking in his ballast, put across to Killybegs on the other side of Donegal Bay, to see what damage the ship had sustained. She was not injured; and the ballasting was completed at Killybegs, but not till the 4th, and the ship did not finally sail till the 8th. On these facts it was held, 1st, that the warranty not to sail after 1st September had not been complied with; and 2d, that the ship, at the time she cleared out at Sligo, was not ready for sea (Pettigrew *v.* Pringle, 3 B. Ad., 514).

In another case, the rules of the insurance association were the same as the two rules before referred to, and the insurance was on a ship then lying in St George's Dock, Dublin, bound for the Bay of Fundy. On 31st August, the ship was cleared at the Dublin Custom-house; at that time, all the crew *were engaged*, but there was not *on board* a sufficient complement of men for the sea-voyage. Early in the morning of the 1st September, the ship dropped down the river

Liffy to the Pigeon-Hole, a place within the port of Dublin, where she lay at anchor the rest of the day. In the course of the same day, the rest of the crew came on board, but, as the wind was unfavourable, the ship did not sail from the Pigeon-Hole, and did not quit the port of Dublin, till the morning of the 2d. Upon these facts, two questions were raised; 1st, Supposing the 9th rule (the time of clearing at the Custom-house to be deemed the time of sailing, provided the ship is then ready for sea) to be left out of consideration, was there here enough to comply with the warranty *not to sail after the 1st September?* and the court were unanimously of opinion that there was not; because, on the day after arriving at the Pigeon-Hole, the ship remained stationary, and did not proceed to sea. 2d, Supposing the 9th rule to be *incorporated* by reference into the policy, was the ship *ready for sea* on 31st August, when she cleared at the Custom-house? and the whole court were unanimous that she was not; for though, on that day, *a full crew* had been engaged, yet the ship had not then a full crew *on board*, and, therefore, had not everything ready for the performance of her voyage at the time of her clearing at the Custom-house (Graham *v.* Barras, 5 B. Ad., 1011).

From the cases which have been laid before you in this letter, two very useful lessons may be drawn as to the actual sailing of the ship. The first is, that nothing in any way connected with the seaworthiness of the ship, should be delayed being done till the moment of sailing, or should be left undone at sailing, with an intention, however real that intention may be, of having it put in proper condition the first leisure time on the voyage; and the second is, that, *before the day of sailing arrives*, you ought to be particularly careful that the ship is in every respect sea-worthy, and that where the warranty is "*to sail*" merely, that *she shall have actually sailed;* and where the warranty is "*to depart*," or "*sail from*," that *she shall be at sea*, on or before the day fixed for her sailing, or departing, or sailing from. Were these lessons more strictly adhered to, many vexatious questions might be avoided; and it will not be out of place here, to lay before you two cases, as to what amounts to a sailing under charter-parties, to one of which reference has been made in the preceding letter.

In the one case, the charter-party contained the usual obligation on the shipowner, that the ship should be tight, stanch, and strong, and every way fitted for a voyage to Constantinople; and, on the sailing of the ship, one-fourth of the freight was to be paid in advance. She loaded at Sunderland a cargo of coals for Constantinople; and being loaded, and in order to save a spring-tide, she left Sunderland docks, and anchored in the roads, where she was lost. When she so left the harbour and anchored in the roads, the master and mate had not

come on board, the crew was not complete, her shrouds and cables had not been put in proper condition for the voyage, and the master had not signed the bills of lading; and the intention was, that she should lie at anchor till the master and mate should come on board, the crew be completed, the shrouds and cables put into proper condition, and the bills of lading should be signed. It was held, that she had not sailed for Constantinople in pursuance of the charter-party (Thomson *v.* Gillespy, 1 Jur. N. S., 779). And, in the other case, the "final sailing" of the ship was the period stated in the charter-party for payment of part of the freight. The ship was wrecked, after having her clearances on board, and she had left the dock-gates, and had reached a ship-canal between high and low water, where she was subject to certain regulations under a local act, and where she was liable to be stopped by the harbour-master. It was held, that she had not finally sailed, within the meaning of the charter-party; the term "final sailing" meaning the final departure from the port, and being at sea ready to proceed on her voyage, and not merely having the clearances on board and ready to sail (Roelandts *v.* Harrison, 9 Exch., 444).

Leaving the ship as sea-worthy, the next consideration is, on sailing, the necessity of having a pilot on board. You or your mate may have a pilotage certificate granted under § 340 of the Merchant Shipping Act, which may enable you or him to pilot the ship or ships therein specified, within the limits therein described, without incurring any penalties for the non-employment of a qualified pilot; and this may enable you to dispense with a qualified pilot at the ship's *home port*. But, in going out of any other port at the commencement of a voyage, the safest rule is to have a qualified pilot on board; and the same rule applies, where, at any of the intermediate stages, a qualified pilot is required by usage, or by the positive regulations of an Act of Parliament. The general rule is, that the master of a ship engaged in the foreign trade must put his ship under the charge of a qualified pilot, both in his outward and homeward voyage, within the limits of a pilotage establishment (Abbot, 195); and the Merchant Shipping Act contains the rules and duties in regard to qualified pilots, which, so far as you are concerned, are now to be explained.

On his appointment, every qualified pilot receives a license, containing his name and usual place of abode, together with a description of his person, and a specification of the limits within which he is qualified to act, which license is to be registered by the principal officer of customs, at the place at or nearest to which the qualified pilot resides; and any qualified pilot acting beyond the limits for which he is qualified by his license, is considered as an unqualified

pilot (17 and 18 Vict., c. 104, § 349). Upon receiving his license, every qualified pilot is furnished with a copy of that part of the Merchant Shipping Act which relates to pilotage, together with a copy of the rates, bye-laws, and regulations, established within the district for which he is licensed; and he must produce these copies to the master of any ship or other person employing him, when required to do so, under a penalty, in case of default, not exceeding £5 (§ 350). Every qualified pilot, while acting in that capacity, must be provided with his license, and must produce the same to every person by whom he is employed, or to whom he tenders his services as pilot; and if he refuses to do so at the request of that person, he incurs, for each offence, a penalty not exceeding £10, and is liable to suspension or dismissal by the pilotage authority by whom he is licensed (§ 351).

Again, as to the boats and ships regularly employed in the pilotage service of any district, the act requires that these be approved and licensed by the pilotage authority* of that district, who can, at their discretion, appoint and remove the masters of these boats and ships. Every pilot-boat or ship must be distinguished by the following characteristics:—1. A black colour painted or tarred outside, with the exception of the names and numbers now to be mentioned, or such other distinguishing colour or colours as the pilotage authority of the district, with the consent of the Board of Trade, directs. 2. On her stern, the name of the owner thereof, and the port to which she belongs, painted in white letters at least one inch broad, and three inches long; and on each bow, the number of the license of that boat or ship. 3. When afloat, a flag at the mast-head, or on a sprit or staff, or in some other equally conspicuous situation,—this flag being of large dimensions compared with the size of the boat or ship which carries the same, and being of two colours,—the upper horizontal half, *white;* and the lower horizontal half, *red.* And it is the duty of the master of the pilot-boat or ship to attend to the following particulars:—1st, That the boat or ship possesses all the above particulars; 2d, that the aforesaid flag is kept clean and distinct so as to be easily discerned at a proper distance; and lastly, that the names and numbers, as before mentioned, are not at any time concealed. And if default is made in any of these particulars, the master of the boat or ship incurs a penalty not exceeding £20 for each default (§ 346).

Whenever a qualified pilot is carried off in a boat or ship not in the pilotage service, he must exhibit a flag of the above description, in order to shew that that boat or ship has a qualified pilot on

* The term "pilotage authority," in the Merchant Shipping Act, includes all bodies and persons authorised to appoint or license pilots, or to fix or alter rules of pilotage, or to exercise any jurisdiction in respect of pilotage (§ 2).

board; and if he fails to do so, without reasonable cause, he incurs a penalty not exceeding £50 (§ 347). And if any boat or ship not having a licensed pilot on board, displays a flag of the description before mentioned, there is incurred, for every such offence, a penalty not exceeding £50,—recoverable from the owner or from the master of that boat or ship (§ 348).

The act also regulates the general rights, privileges, and remuneration of pilots; and it is enacted, that if any boat or ship, having a qualified pilot on board, leads any ship which cannot, from particular circumstances, be boarded, the pilot so leading the last-mentioned ship is entitled to full pilotage for the distance run, as if he had actually been on board and had charge of that ship (§ 356).

Except under circumstances of unavoidable necessity, no pilot must, without his consent, be taken to sea, or beyond the limits for which he is licensed, in any ship whatever; and every pilot so taken under circumstances of unavoidable necessity, or without his consent, is entitled, over and above his pilotage, to the sum of 10s. 6d. a-day, to be computed from and inclusive of the day on which the ship passes the limit to which he was engaged to pilot her, up to and inclusive of the day of his being returned "in the said ship" to the place where he was taken on board, or up to and inclusive of such a day as will allow him, if discharged from the ship, sufficient time to return thereto. In this last-mentioned case, he is also entitled to his reasonable travelling expenses (§ 357).

If, on being requested by any qualified pilot having charge of his ship, to declare her draught of water, the master refuses to do so, or he himself makes, or is privy to any other person making, a false statement to that pilot as to this draught, he incurs a penalty for every such offence not exceeding double the amount of pilotage, which would have been payable to the pilot making that request; and if the master or other person interested in the ship makes, or is privy to any other person making, any fraudulent alteration in the marks on the stern or stem-post of his ship denoting her draught of water, the offender incurs a penalty not exceeding £500 (§ 359). And any qualified pilot demanding or receiving, and also any master offering or paying to any pilot, any other rate in respect of pilotage services, whether greater or less, than the rate for the time being demandable by law, incurs for each offence a penalty not exceeding £10 (§ 358).

An unqualified pilot assuming or continuing in charge of a ship after a qualified pilot has offered to take charge of her, or using a license which he is not entitled to use, for the purpose of making himself appear to be a qualified pilot, incurs for each offence a penalty not exceeding £50 (§ 361). A qualified pilot can supersede an unqualified pilot, but the master can pay to this unqualified pilot a

proportionate sum for his services, and deduct this sum from the charge of the qualified pilot. In case of dispute, the pilotage authority, by whom the qualified pilot is licensed, determines the proportionate sums to which each party is entitled (§ 360).

But, without subjecting himself or his employer to any penalty, an unqualified pilot can, within any pilotage district, take charge of a ship under the following circumstances:—when no qualified pilot has offered to take charge of the ship, or made a signal for that purpose; or when a ship is in distress, or under circumstances making it necessary for the master to avail himself of the best assistance which can be found at the time; or for the purpose of changing the moorings of a ship in port, or of taking her into or out of dock, in cases where such act can be done by an unqualified pilot without infringing the regulations of the port, or any orders which the harbour master is legally empowered to give (§ 362).

As to compulsory pilotage, the Merchant Shipping Act has the following general rules; and it enacts that, subject to any alteration to be made by any pilotage authority, in pursuance of the powers given by §§ 332 and 333 of the act, the employment of pilots continues to be compulsory in all districts in which the same was by law compulsory immediately before 1st May 1855, when the act came into operation; and all exemptions from compulsory pilotage then existing within these districts also continue in force. Every master of an unexempted ship navigating within such district, who, after a qualified pilot has offered to take charge of the ship, or has made a signal for that purpose, either himself pilots his ship without possessing a pilotage certificate enabling him so to do, or employs, or continues to employ, an unqualified person to pilot her, and every master of an exempted ship navigating within any such district who, after a qualified pilot has offered to take charge of his ship, or has made a signal for that purpose, employs, or continues to employ, an unqualified pilot to pilot her, he, for every such offence, incurs a penalty of double the amount of pilotage demandable for the conduct of that ship (§ 353).

The master of every ship carrying passengers between any place situate in the United Kingdom, or the islands of Guernsey, Jersey, Sark, Alderney, and Man, and any other place so situate, when navigating upon any waters within the limits of a district for which pilots are duly licensed by any pilotage authority, or upon any part thereof so situate, must employ a qualified pilot to pilot his ship, unless he or his mate has a pilotage certificate authorising him, as master, or his mate, to pilot his ship within that district, or a certificate, as now to be mentioned, being a certificate applicable to that district and to his ship; and if he fail so to do, he incurs for every

offence a penalty not exceeding £100 (§ 354). But any master or mate of a ship carrying passengers, which, as now mentioned, is made subject to compulsory pilotage, can apply to the Board of Trade for a certificate; and thereupon, and on satisfactory proof of his having continuously piloted any ship within the limits of any pilotage district, or of any part or parts thereof, for two years prior to the commencement of the act, or upon satisfactory proof by examination of his competency, or otherwise, as the Board may deem expedient, the Board causes to be granted him, or indorsed on his certificate of competency or service, a certificate to the effect, that he is authorised to pilot any ship or ships belonging to the same owner, and of a draught of water not greater than the draught specified in the certificate, within the limits of any pilotage authority. This certificate remains in force for such time as the Board of Trade directs, and enables the master or mate therein named, to conduct the ship or ships therein specified, within the limits therein described, to the same extent as if the foregoing § 354 had not been passed, but not further or otherwise. Upon applying for this certificate, or any renewal thereof, the master or mate must pay to the Board, or as it directs, such fees, not exceeding the fees payable on an examination for a master's certificate of competency, as the Board directs (§ 355).

Then, as to the persons who have to pay pilotage dues, the act enacts that the following persons are liable to pay pilotage dues for any ship for which the services of a qualified pilot are obtained—viz., the owner or master, or the consignees or agents of the ship who have paid, or made themselves liable to pay, any other charge on account of that ship in the port of her arrival or discharge, *as to pilotage inwards;* and, in the port from which she clears out, *as to pilotage outwards.* In default of payment, these pilotage dues can be recovered in the same manner as penalties of the like amount are recoverable under the act (see Part 10 of Merchant Shipping Act); but this recovery cannot take place until a previous demand thereof has been made in writing, and the dues so demanded have remained unpaid for seven days after the time of this demand being made (§ 363). And every consignee or agent (not being the owner or master) thus made liable for the pilotage dues, can, out of any monies received on account of that ship, or belonging to the owner thereof, retain the amount of all dues so paid by him, together with any reasonable expenses he may have incurred by reason of that payment or liability (§ 364).

The Merchant Shipping Act enacts, that the following offences committed by qualified pilots in general, are to be punished as aftermentioned:—

(1.) If he keeps himself, or is interested in keeping by any agent,

servant, or other person, any public-house or place of public entertainment, or sells, or is interested in selling, any wine, spirituous liquors, tobacco, or tea—(2.) Commits any fraud or other offence against the revenues of Customs or Excise, or the laws relating thereto—(3.) Is in any way concerned, directly or indirectly, in any corrupt practices relating to ships, their tackle, furniture, cargoes, crews, or passengers, or to persons in distress at sea or by shipwreck, or to their monies, goods, or chattels—(4.) Lends his license—(5.) Acts as pilot whilst suspended—(6.) Acts as pilot when in a state of intoxication—(7.) Employs, or causes to be employed, on board any ship of which he has the charge, any boat, anchor, cable, or other store, matter, or thing beyond what is necessary for the service of that ship, with the intent to enhance the expenses of pilotage for his own gain, or for the gain of any other person—(8.) Refuses or wilfully delays, when not prevented by illness or other reasonable cause, to take charge of any ship within the limits of his license, upon the signal being made for a pilot by that ship, or upon being required to do so by the master, owner, agent, or consignee thereof, or by any officer of the pilotage authorities by whom he is licensed, or by any principal officer of customs—(9.) Unnecessarily cuts or slips, or causes to be cut or slipped, any cable belonging to any ship—(10.) Refuses, on the request of the master, to conduct the ship of which he has charge, into any port or place into which he is qualified to conduct the same, except on reasonable ground of danger to the ship—(11.) Quits the ship of which he has the charge, without the consent of the master, before the service for which he was hired has been performed :—

He incurs, for each such offence, a penalty not exceeding £100, in addition to any liability for damages at the suit of the party aggrieved; and he is also liable to suspension or dismissal by the pilotage authority by whom he is licensed. Every person who procures, abets, or connives at the commission of any such offence as has been now specified, likewise incurs a penalty not exceeding £100, in addition to any liability for damages as aforesaid, and, if a qualified pilot, he is also liable to suspension or dismissal by the pilotage authority by whom he is licensed (§ 365).

If, when in charge of a ship, any pilot, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of that ship, or tending immediately to endanger the life or limb of any person on board that ship,—or if any pilot, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him, for preserving that ship from loss, destruction, or serious damage, or for

preserving any person belonging to or on board of that ship from danger to life or limb,—the party so offending is deemed, for each such offence, guilty of a misdemeanonr; and if a qualified pilot, he is also liable to suspension or dismissal by the pilotage authority by which he is licensed (§ 366).

If, by wilful misrepresentation of circumstances npon which the safety of a ship may depend, any person obtains, or endeavours to obtain, the charge of that ship, such person, and every other person procuring, abetting, or conniving at the commission of such offence, incurs a penalty not exceeding £100, in addition to any liability for damages at the snit of the party aggrieved; and if the offender is a qualified pilot, he is also liable to snspension or dismissal by the pilotage anthority by which he is licensed (§ 367).

These are the general statntory rules applicable to pilots in the United Kingdom; and the Merchant Shipping Act has the following enactments relating to Trinity House pilots only; that is, such pilots as the Trinity House appoint, after due examination by themselves or their sub-commissioners, and license nnder their common seal, for the purpose of conducting ships within the following limits, or any portion of these limits, viz.:—

1. "The London District," comprising the waters of the Thames and Medway, as high as London Bridge, and also the seas and channels leading thereto or therefrom, as far as Orfordness to the north, and Dungeness to the south; but so that no pilot is to be licensed to conduct ships both above and below Gravesend.

2. "The English Channel District," comprising the seas between Dnngeness and the Isle of Wight.

3. "Trinity House Outport Districts," comprising any pilotage district, for the appointment of pilots within which no particular provision is made by any act of Parliament or charter (§ 370).

The names of all pilots licensed by the Trinity House, are published in the following manner:—A notice is fixed np at the Trinity House in London, specifying the name and nsnal place of abode of every pilot so licensed, and the limits within which he is licensed to act, and the Trinity House transmit a copy of this notice to the Commissioners of Customs in London, and to the principal officers of customs resident at all ports within the limits for which that pilot is licensed; this notice to be posted up by the Commissioners at the Custom-house in London, and by the principal officers at the Cnstom-honses of the ports at which they respectively are resident (§ 371).

Subject to any alteration to be made by the Trinity House, every Trinity House pilot must, on his appointment, execute a bond for £100 for the due observance, on his part, of the regulations and bye-laws of the Trinity House (§ 372). And no qualified pilot who

has executed this bond, is liable for neglect or want of skill beyond its penalty and the amount of pilotage payable to him in respect of the voyage in which he is engaged (§ 373).

Subject to any alteration to be made by the Trinity House, no license granted by them continues in force beyond the 31st January next ensuing its date ; but upon the application of the pilot holding the license, the same can be renewed on that day in every year, or any subsequent day, by indorsement by their secretary, or of such other person as they may appoint for that purpose (§ 374).

Subject to alterations to be made by the Trinity House, and to the exemptions to be immediately mentioned, the pilotage districts of the Trinity House, *within which the employment of pilots is compulsory*, are, the London District, and the Trinity House Outport Districts, as before defined. The master of every ship navigating within any part of the former district, or of the latter districts, who, after a qualified pilot has offered to take charge, or has made a signal for that purpose, either himself pilots his ship, without possessing a certificate enabling him to do so,—or employs, or continues to employ, an unqualified person to pilot her,—incurs, for every such offence, and in addition to the penalty of double the amount of pilotage incurred under § 353, an additional penalty of £5 for every 50 tons burden of his ship, if the Trinity House certify in writing under their common seal, that the prosecutor is at liberty to proceed for the recovery of this additional penalty (§ 376).

Subject to any alteration to be made by the Trinity House, a sufficient number of qualified pilots are always ready to take charge of ships coming from the westward past Dungeness ; and the Trinity House make such regulations with respect to the pilots under their control, as are necessary to provide for an unintermitted supply of qualified pilots for these ships, and to insure their constant attendance upon, and due performance of, their duty, both by night and day, whether by cruising between the South Foreland and Dungeness, or by going off from shore upon signals made for the purpose, or by both these means, or by any other means, and whether by rotation or otherwise, as the Trinity House think fit (§ 377).

Subject to any alteration to be made by the Trinity House, every master of a ship coming from the westward, and bound to any place in the rivers Thames and Medway (unless she has a qualified pilot on board, or is exempted from compulsory pilotage), must,—on her arrival off Dungeness, and thenceforth until she has passed the south buoy of the Brake, or a line drawn from Sandown Castle to that buoy, or, until a qualified pilot has come on board,—display, and keep flying, the usual signal for a pilot ; and, if a qualified pilot is within hail, or is approaching and within half a mile, and has the

proper distinguishing flag flying in his boat, the master must,—by heaving to in proper time, or shortening sail, or by any practicable means consistent with the safety of his ship,—facilitate that pilot getting on board, and must give the charge of piloting his ship to him; or, if there are two or more of these pilots offering at the same time, to that one of them, who, according to the regulations in force for the time being, is entitled or required to take such charge. If the master fails to display or keep flying the usual signal for a pilot, as before required, or to facilitate a qualified pilot as aforesaid getting on board, as also before required, or to give the charge of piloting his ship to such pilot as before mentioned, he incurs a penalty not exceeding double the sum which might have been demanded for the pilotage of his ship; this penalty being payable to the Trinity House (§ 378).

The following ships, when not carrying passengers (see sect. 354, *ante*, p. 71), are exempted from compulsory pilotage in the London District, and in the Trinity House Outport Districts:—1. Ships employed in the coasting trade of the United Kingdom. 2. Ships of not more than sixty tons burden. 3. Ships trading to Boulogne, or to any place in Europe north of Boulogne. 4. Ships from Guernsey, Jersey, Alderney, Sark, or Man, wholly laden with stone, the produce of these islands. 5. Ships navigating within the limits of the port to which they belong. 6. Ships passing through the limits of any pilotage district on their voyages between two places both situate out of these limits, and not being bound to any place within these limits, nor anchoring therein (§ 379).

The pilotage dues payable to all Trinity House pilots, in respect of their pilotage services, continue the same as these were immediately before the Merchant Shipping Act came into operation, but subject to any alteration to be made by the Trinity House (§ 380). And whenever any difference arises between the master and any qualified pilot of a ship trading to or from the port of London, upon application by either party, in the case of a ship *inward bound*, made within twelve hours after her arrival, or at some time before she begins to discharge her cargo, and in the case of a ship *outward bound*, before she quits her moorings, the Trinity House appoint some proper officer who measures the ship and settles the difference accordingly. To the officer so measuring the ship, there has to be paid by the party against whom he decides, one guinea if the ship *be below*, and half a guinea if the ship *be above*, the entrance of the London Docks at Wapping (§ 384).

And there is a concluding saving clause, which enacts, that no owner or master of any ship is answerable to any person whatever, for any loss or damage occasioned by the fault or incapacity of any

qualified pilot acting in charge of his ship, within any district where *the employment of such pilot is compulsory by law* (§ 388). This saving clause in the Merchant Shipping Act is substantially in the same terms as the 55th sect. of the General Pilotage Act, 6 Geo. IV., c. 125, now repealed; and under this latter section it was held, that the owner of a ship, claiming exemption from liability for damages by reason of having a licensed pilot on board, is bound to prove that the damage was occasioned by the fault of the pilot alone; the owners being only relieved from liability for damages done by their ship, where that damage is occasioned by the fault, negligence, or misconduct of the pilot alone; and, therefore, if the cause of damage was the joint fault of the pilot and the master, the owners were not discharged by the section now referred to (Hammond *v.* Rogers, 7 Moores, T. C. C., 160). And, when a vessel is proceeding to sea, under the care of a qualified pilot, and damage is done by the mismanagement of that vessel, the owners, in order to discharge themselves from liability, must shew that the accident was occasioned exclusively by the pilot's fault (Rodrigues *v.* Melhuish, 10 Exch., 110.)

We will now proceed, in the following letter, to consider the ship's official log-book, and the manner in which it must be kept.—I am, &c.

LETTER VI.

Departure from land—Official log for voyage—Purposes of log—Entries in official log, when to be made, and how to be authenticated—Form in which these entries should be made—Purposes to be served thereby—Particular statutory entries—Conviction and punishment of any member of crew—Offences by members of crew—Punishments inflicted on board—Conduct, character, and qualifications of each of crew—Illness or injury happening to any member—Every death, birth, or marriage on board—Seaman or apprentice ceasing to be member of crew—Amonnt of wages dne to seaman entering into navy—Amonnt of wages, and the effects of seaman or apprentice dying dnring voyage—Every collision—Entries how to be attested—Offences in respect of log-books, and pnnishments—Necessity of these entries being correct—Delivery to shipping masters of official log-books for foreign-going and home-trade ships—On foreign-going or home-trade ships ceasing to be snch—Accommodation of seamen on board—Provisions—Allowances for deficiencies or bad qnality—Substitutes for provisions—Examination of provisions or water—Penalty on master for not providing proper provisions or water—Report of examiner to Board of Trade—Rules as to supply of medicines, medical stores, and antiscorbutics—Penalties on master or owner for default—Weights and measures to be kept on board—Rules as to expenses attendant on illness, injury, or death—Medical practitioners—Expenses in respect of illness, &c., paid by consular officer, &c.—Regulations for preserving and enforcing discipline—Entry in official log-book—Purpose of this entry—All seafaring persons on board subject to same laws and regulations, &c.—Neglecting or refnsing to join, deserting, &c.—Conveyance of offender on board—When seaman imprisoned—Production of entries of desertion abroad in official log-book—Forfeitnre of wages for desertion—Proof of desertion—Expenses of conviction and pnnishment for desertion—Calculation of forfeitures—Clothes, effects, &c., forfeited for desertion, how to be applied—False statements by seaman at engagement—Disposal of fines—Disobedience and mntiny, how to be punished—Liability of master to damages for punishment improperly inflicted.

GENTLEMEN,—Let us assume now that the pilot has left the ship, and that you are fairly out at sea, and that, having taken your bearing and distance from the last port of the land you may select as your first point of departure,—these are duly entered in either the ordinary, or the official log of the ship. From this point, your sea-log commences, according to every sea-day of the ship, from 12 noon to 12 noon.

You know that an official log-book is required for every ship (except ships employed exclusively in trading between ports on the coasts of the United Kingdom), and must be kept in the appropriate sanctioned form for different classes of ships, each form containing blanks for the statutory entries required by the act, and now to be noticed. This official log can, at the discretion of the owner or master, be kept either distinct from the ship's ordinary log, or united therewith; but, in all cases, *all the blanks in the official log must be duly filled up* (§ 280). This is a plain and an important duty, imperatively imposed upon you for a very necessary and essential object, most

seriously connected with the character, conduct, and qualifications of each member of your crew; and it is quite disgraceful that any intelligent master should allow this official record to be a mere blank, instead of its affording correct and reliable statements in regard to the diverse dispositions of each individual who may, from time to time, sail under your charge. The special object of the official log is, truly to record the statutory matters relating to the character and conduct of each individual; and, from the entries in this record, duly made and signed, as required by the act, you ought to have abundant materials for making up a full and distinct report of the conduct, character, and qualifications of each seaman discharged before a shipping master, as is required from you by § 176.

In order to insure accuracy and punctuality in these entries, the act requires that *every entry* in the official log must be made as soon as possible after the occurrence to which it relates; and, if not made on the same day as that occurrence *has taken place*, it must be made and dated, so as to shew the date of the occurrence, and of the entry respecting it. In no case must any entry, in respect of any occurrence happening previous to the arrival of the ship at her final port of discharge, be made in the official log more than twenty-four hours after this arrival (§ 281); and these entries, as to each of the thirteen distinct matters to be immediately noticed, are required to be made in the official log-book, and must be signed as follows:—(1.) Every such entry must be signed by the master, and by the mate, or some other of the crew. (2.) Every entry of illness, injury, or death (see § 228 *post*), must also be signed by the surgeon or medical practitioner, if there is one on board. (3.) Every entry of wages due to, or of the sale of the effects of, any seaman or apprentice who died (see § 194 *post*), must be signed by the master, and by the mate, and some other member of the crew. And (4.) every entry of wages due to any seaman who enters her Majesty's service (see § 215 *post*), must be signed by the master and by the seaman, or by the officer authorised to receive the latter into her Majesty's service (§ 283).

In the official log-book, the master is required by the act, to make, or cause to be made, entries of the following matters; and these matters ought to be so entered, in such a detailed form, as to enable any third party,—a stranger to the transaction there entered,—to acquire a distinct outline of any proceedings which have been adopted, or any steps which have been taken against any of the crew. This official log should present *an authentic domestic history of the crew* (if I may use the expression) for the voyage, duly certified by the requisite signatures to each entry, so as to form a faithful picture of the predominant traits of individual character. Were the official logs thus fully and faithfully filled up and attested from

day to day, and were it distinctly known to the crew that this was the public record of all their faults and failures, as well as of their general conduct, character, and qualifications, instead of being merely, —as there is too good reason to conclude it most frequently is,—a jumble of unconnected, unintelligible, and ill-spelt lines, without order in the dates, or distinct expression of the purpose intended,—it is reasonable to infer, that a crew of the average intelligence of the present day, will be as careful to avoid having their names appear in the official log-book, as they would being given in charge to the police. While, at the same time, an official log so correctly and satisfactorily filled up, will afford the master ample and trustworthy materials for the list, which, both for a foreign-going and a home-trade ship, he has to deliver to the shipping master, in terms of §§ 273, 274, and 275; and will also supply the Registrar-General with valuable materials for the preparation and correction of his register of seamen.

Let us proceed, then, to consider in detail the different matters to which the statutory entries in the official log-book has to relate, and the form in which these matters ought to be so entered.

Of these entries, the first in order is an entry of every legal conviction of any member of his crew, and of the punishment inflicted. This may apply to sentences pronounced in criminal proceedings for crimes committed on the high seas and abroad, under §§ 267, 268, or for crimes committed *by any member of the crew*, either on shore or afloat; and in such cases the correct course is, to insert in the official log a copy, in the words of the impeachment or accusation, of the crime of which that person is accused, or with which he is charged, the court or judge before which or by whom he has been tried, and the nature and extent of the punishment inflicted.

It is also required that there be an entry in the official log of every *offence*, which may be committed by any member of the crew, for which it is intended (1) to prosecute, or (2) to enforce a forfeiture, or (3) to exact a fine; and this entry must be signed by the master, and also by the mate or one of the crew; and if the offender is still in the ship, he must, before her next subsequent arrival at any port, or, if she is in port at the time, before her departure therefrom, either be furnished with a copy of this entry, or have the same distinctly and audibly read over to him; and, thereupon, he may make such reply thereto as he thinks fit; and then there must be a statement that a copy of the entry has been so furnished, or that the entry has been so distinctly and audibly read over to him, and an entry of his reply, if he makes any, as required by § 244, to be afterwards noticed.

The next statutory requirement for the official log, is an entry of every offence *for which punishment is inflicted on board*, and the

punishment inflicted. Now, these offences clearly are not the statutory offences which have been just now referred to; for these statutory offences have their respective statutory punishments; and, therefore, the entry to be made in the official log is an entry of any breach of the regulations referred to in the seventh particular of the agreement, as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties have agreed to adopt.

The fourth statutory entry in the official log, is a statement of the conduct, character, and qualifications of each of the crew, or a statement that the master declines to give an opinion on these particulars. By § 176 you will observe that, upon every discharge effected before a shipping master, the master must make and sign, in the form sanctioned by the Board, a report of the conduct, character, and qualifications of the persons discharged, or he may state, in the column left for that purpose, that he declines to give any opinion upon these particulars, or any of them. This report is transmitted by the shipping master to the registrar, and will afterwards come more directly under our consideration; but it is plain, that the entries made from time to time in the official log must furnish the materials from which this report has to be made up, and, consequently, that these entries should narrate barely the facts as they actually did occur, with any peculiarities in his general conduct or qualifications which may be deemed deserving of notice, or which may form an ingredient in the general estimation of his character.

The fifth class of entries required in the official log embraces "every case of illness or injury happening to any member of the crew, with the nature thereof, and the medical treatment adopted." In *foreign-going ships* which carry medical practitioners on board, these entries will be made by him, and be attested by his subscription, as well as by that of the master or mate. But in the majority of cases, ships are of that class which do not carry medical practitioners; and, therefore, the greater is the necessity for the masters of foreign-going ships at least, possessing such a knowledge of the accidents and diseases which are incident to sea voyages, and of the medicines and medical treatment adapted to these.

The sixth, seventh, and eighth entries are of every death happening on board, and of the cause thereof; every birth happening on board, with the sex of the infant, and the names of the parents; and every marriage taking place on board, with the names and ages of the parties. These correspond to the eighth, ninth, and tenth branches of the list, which you are required to return to the shipping master, in terms of §§ 273, 274, and 275, and which will be immediately

noticed. And, in addition, it will be necessary to attend to the following additional particulars required by the 6th and 7th Wm. IV., c. 86, and the 17th and 18th Vict., c. 80, by which it is enacted, in reference to *deaths* at sea, that if any English or Scottish subject shall die at sea on board a British vessel, the captain or commanding officer must forthwith make a minute, in the log-book or otherwise, of the name, sex, and age of the party, where born, the parents' names and designations, when and where the death happened, the cause of death, and how buried, and the name of the ship in which the death took place. And in reference to *births* at sea, § 21 of the former, and § 30 of the latter statute enact, that the captain or commanding officer must forthwith make an entry, in the log-book or otherwise, of the sex of the infant, when and where the birth took place, the name and designation of the parents, and the name of the ship; and this minute must be signed by the father or mother, or other informant. On the arrival of the ship in any part of the United Kingdom, or by any other earlier opportunity, the master must send, through the post-office, a certified copy of these respective minutes or entries to the Registrar-General of Births, &c., in London or Edinburgh, according as the parties belong to England or Scotland.

The ninth particular to be entered in the official log, is the name of every seaman or apprentice who ceases to be a member of the crew, *otherwise than by death*, with the time, place, manner, and cause thereof. This ceasing to be a member of the crew may arise from the master's forcing a seaman ashore, or leaving him behind at any place abroad,—by a seaman's volunteering into the navy,—or by his desertion from the ship abroad,—each of which will come in due turn in a subsequent part of these letters. A similar entry is required in the fourth head of the list, which the master has to deliver to the shipping-master.

The tenth entry in the official log is the amount of wages due to any seaman who enters her Majesty's service during the voyage. This entry will just be a copy of the account of the proportionate amount of wages due to the seaman so entering, and of all legal deductions therefrom, which the master has to give the officer authorised to receive the seaman, and according to which these wages are to be paid in money or by bill, in terms of § 215.

The eleventh head requires an entry of the amount of wages due to any seaman or apprentice *who dies* during the voyage, and the gross amount of all deductions to be made therefrom. And, under the twelfth head must be entered, the sale of the effects of any seaman or apprentice who dies during the voyage, including a statement of each article sold, and of the sum received for it. These

are substantially the same entries as are required by § 194 to be made in the official log-book, and to be attested by the mate and by one of the crew, on the events happening as mentioned in that chapter.

The last statutory entry in the official log-book is a statement of every collision with any other ship, and of the circumstances under which the same occurred. In connexion with the 296th and subsequent sections, questions as to collisions will find their proper place in a subsequent letter; and here, it is only necessary to remind you, that these entries in the official log, as required by this section, should be as full and precise as the circumstances will allow, and must be strictly according to the actual facts, so as these entries can be transcribed into the protest you will, in such a case, take at the first port, and confirm on oath by your mate and some of your crew (§ 282).

The entries to be made in the official log-book must be signed by the master, and also by the mate or one of the crew, on the commission by any seaman of any of the offences enumerated in § 243; and the entries to be made in cases of desertion as directed by §§ 249, 250, and the entries of acts of misconduct punishable by fine under the agreement in terms of § 256, and the entries of all orders made by naval courts,—belong to an after-part of these letters, and need not be mentioned here. All entries so made in the official log-book, as directed by the act, are received in evidence in any court of justice, subject, of course, to all just objections (§ 285).

The following offences, in respect of official log-books, are punishable as now to be mentioned:—

(1.) If, in any case, an official log-book is not kept in the manner required by the act, or if any entry directed by the act to be made in that log-book is not made at the time and in the manner as so directed, the master incurs, for each such offence, the specific penalty mentioned in the act in respect thereof; or where there is no such specific penalty, a penalty not exceeding £5.

(2.) Every person who makes, or procures to be made, or assists in making, an entry in the official log-book, in respect of any occurrence happening *previously to the arrival* of the ship at her final port of discharge, more than twenty-four hours after that arrival, he incurs, for each such offence, a penalty not exceeding £30.

(3.) Every person who wilfully destroys, or mutilates, or renders illegible, any entry in an official log-book, or who wilfully makes, or procures to be made, or assists in making, any false or fraudulent entry or omission in that log-book, he, for each such offence, is deemed guilty of a misdemeanour (§ 284).

You have thus seen the careful provisions made by the Merchant

Shipping Act for due entries in the official log-book of certain statutory requirements, and to have these entries duly authenticated in a proper and satisfactory manner. Whether, therefore, you keep the official log distinct from or united with the ship's ordinary log, *it is your duty* to enter *in the former*, in plain and intelligible *grammatical, well-spelt* language, the matter required by the act to be so entered, and that immediately after such matter occurs; and it is equally your duty to enter *in the latter*, the ship's ordinary log, the occurrences and routine of the day, more especially the meteorological and astronomical observations, and not allow the "day's work" to appear as a mere blank. The latter log, you are aware, when correctly kept, and more especially when regularly written by the mate from the log slate, is often an important link in the chain of evidence as to occurrences on the voyage in questions with freighters and underwriters; and the correctness and regularity of the official log, besides the statutory entries already noticed, are insured by the compulsory return of these to the shipping masters in terms of the following enactments:—

In the case of *foreign-going ships*, within forty-eight hours after the ship's arrival at her final port of discharge in the United Kingdom, or upon the discharge of the crew, whichever first happens, the master must deliver to the shipping master before whom the crew is discharged, *the official log-book of the voyage;* and in the case of *home-trade ships,* within twenty-one days after the 30th June and 31st December in every year, the master or owner of every home-trade ship (not exclusively employed in trading between ports on the coasts of the United Kingdom), must transmit or deliver to some shipping master in the United Kingdom, the official log-book for the preceding half-year. Every master or owner who refuses or neglects to deliver his official log-book as required by this enactment, is subject to the same consequences and liabilities to which he is made liable by § 273 for not delivering the lists of his crew as thereby required, viz., £5 for every default and the non-clearance of his ship (§ 286).

When, by a transfer of ownership or change of employment, a ship ceases to fall within the definition of a foreign-going or of a home-trade ship, the master or owner must, within one month, if she is then in the United Kingdom, and within six months if she is elsewhere, deliver or transmit to the shipping master at the port to which she belonged, the official log-book, duly made out to the time at which she ceased to be a foreign-going or home-trade ship; and, in default, he incurs for each offence a penalty not exceeding £10. If the ship is lost or abandoned, the master or owner must, if practicable, and as soon as possible, deliver or transmit to the shipping

master at the port to which she belonged, the official log-book, duly made out to the time of the loss or abandonment; and, in default, he incurs for each offence a penalty not exceeding £10 (§ 287).

In a previous letter, we have gone over the statutory forms in which the seamen have to be engaged; and having laid before you the duties which the statute has imposed upon you in regard to the official log-book, let us now look at the statutory regulations for the accommodation, provisioning, health, and discipline of the crew on board, and the entries which are required in the official log-book in connexion with any of these heads.

And, first, with respect to the accommodation on board, the act prescribes the following rules:—(1.) Every place occupied by seamen or apprentices, and appropriated to their use, must have for each seaman or apprentice, if they sleep in hammocks, a space of not less than nine superficial feet, and, if they do not sleep in hammocks, a space of not less than twelve superficial feet, measured on the deck or floor of that place:—(2.) It must either be six feet in height from deck to deck, or must have for each seaman or apprentice, if they sleep in hammocks, a space of not less than 54 cubic feet, and, if they do not sleep in hammocks, a space of not less than 72 cubic feet:—(3.) It must be kept free from stores or goods of any kind, not being the personal property of the crew in use during the voyage:—and (4.) It must be properly calked, and in all other respects securely and properly constructed and well-ventilated.

And if any such place is not (1st) in the whole sufficiently large to give the foresaid space for each seaman or apprentice as before required, or (2d) is not properly calked and in all other respects securely and properly constructed and well-ventilated,—then, for every failure so to comply with these provisions, *the owner* incurs a penalty not exceeding £20; and (3d) if the foresaid space is not kept free from goods and stores as before required, then, for every failure so to comply with this provision, *the master* incurs a penalty not exceeding £10 (§ 231).

Again, as to the provisions, you know the 6th particular or head of the agreement contains "a scale of the provisions which are to be furnished to each seaman," and that in the 7th particular or head must be specified, any short allowance of provisions for misconduct, which has been sanctioned by the Board, and agreed to be adopted. Now, if during the voyage the allowance *of any* of these provisions so stipulated for by the agreement is reduced, unless this reduction is made by way of punishment in terms of the agreement, or unless for any time during which a seaman, wilfully and without sufficient cause, refuses or neglects to perform his duty, or unless when he is

under confinement for misconduct either on board or on shore,—or if it is shewn that any of these provisions are or have been during the voyage bad in quality and unfit for use, then the seaman is entitled to receive as compensation for this reduction or bad quality, the following sums in addition to and recoverable as wages:—(1.) If his allowance is reduced by any quantity not exceeding one-third of the quantity specified in the agreement, a sum not exceeding 4d. a-day; (2.) If his allowance is reduced by more than one-third, 8d. a-day; (3.) In respect of such bad quality, a sum not exceeding 1s. a-day (§ 223).

But if it is shewn to the satisfaction of the court before which the case is tried, that any provisions, the allowance of which has been reduced, could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied, the court can take these circumstances into consideration, and modify or refuse compensation as the justice of the case may require (§ 223).

Any three or more of the crew can complain to any officer in command of any of her Majesty's ships, or to any British consular officer, or to any shipping master, or to any chief officer of customs, that the provisions or water for the use of the crew are, at any time, of bad quality, unfit for use, or deficient in quantity; and the officer to whom this complaint is made, can thereupon examine, or can cause to be examined, the said provisions or water. If, on this examination, these provisions or the water are found to be of bad quality and unfit for use, or to be deficient in quantity, the person so making this examination, signifies the same *in writing* to the master; and if, thereupon, the master does not provide other proper provisions or water in lieu of any so signified to be of bad quality and unfit for use, or does not procure the requisite quantity of any so signified to be insufficient in quantity, or uses any provisions or water so signified as of a bad quality and unfit for use, in every such case he incurs a penalty not exceeding £20 (§ 221).

Upon every examination as aforesaid, the officer making or directing the same must enter a statement of the result of the examination in the *official log*, and must send a report thereof to the Board of Trade. And if this report is produced out of the custody of the Board or its officers, the same is to be received in evidence in any legal proceeding (§ 221). But if the officer to whom any such complaint is made as aforesaid certifies, in his statement in the official log, that there was no reasonable ground for that complaint, *each of the* parties so complaining is liable to forfeit to the owner, out of his wages, a sum not exceeding one week's wages (§ 222).

With respect to medicines, medical stores, and antiscorbutics, the following rules must be observed:—

(1.) From time to time the Board of Trade issues and causes to be published, the scale of medicines and medical stores suitable to accidents and diseases arising on sea voyages; and,

(2.) The owner of every ship navigating between the United Kingdom, and any place out of the same, must provide, and cause to be constantly kept on board that ship, a supply of these medicines and medical stores, in accordance with said scale (§ 224). And in reference to thus providing and constantly keeping on board a proper supply of medicines and medical stores, it has been held that, though the act imposes on the owner the penalty after mentioned, recoverable as the specific punishment for a failure so to do, as to the public,—sailors sustaining a private injury from a breach of this statutable duty, are entitled to recover damages (Couch *v.* Steel, 18 Jur., 515).

(3.) Except ships bound to European ports, or to ports in the Mediterranean, and also except such ships or classes of ships bound to ports on the eastern coast of America north of 35° N. Lat., and to any islands or places in the Atlantic north of the same limit, as the Board of Trade may from time to time exempt from this enactment, —the master or owner of every foreign-going ship must also provide and cause to be kept on board, a sufficient quantity of lime or lemon juice, or of such articles as the Board of Trade sanctions as substitutes for lime or lemon juice, and also a sufficient quantity of sugar and vinegar; and,

(4.) The master must serve out the lime or lemon juice, or other articles substituted as aforesaid, and the sugar and vinegar, to his crew, whenever they have consumed salt provisions for ten days, and so long afterwards as this consumption continues,—the lime or lemon juice and sugar at the rate of half an ounce each per day, and the vinegar weekly, at the rate of half a pint per week to each member of the crew (§ 224).

And if, in any of the foresaid ships, these medicines, medical stores, lime or lemon juice, or other substituted articles, and sugar and vinegar, as before required, are not so provided and kept on board, the master or owner incurs a penalty not exceeding £20; and if the master neglects to serve out the lime or lemon juice, or other substituted articles, sugar, or vinegar, in the case and manner before directed, he incurs, for each offence, a penalty not exceeding £5. But if a master is convicted in either of these penalties, and it appears that the offence is owing to the act or default of the owner, then the master can recover the amount of the penalty and the costs incurred by him from his owner (§ 224). The inspection of the medical stores, &c., by the medical inspectors, has been already referred to.

Again, not merely the masters of the ships now mentioned, but *every master* must keep on board proper weights and measures, for the purpose of determining the quantities of the several articles and provisions served out, in terms of the agreement and of the act, and must allow the same to be used *at the time of serving these out*, in the presence of a witness,—this being only required, however, when any dispute arises about the quantities which have been or are being served out (§ 225).

Then, with respect to the expenses attendant on illness and death, the following statutory rules are to be observed :—

(1.) If the master, or any of the seamen, or apprentices, receives any hurt or injury *in the service* of the ship to which he belongs, the owner of the ship has to defray the expense of providing the necessary surgical and medical advice, with attendance and medicines, and of his subsistence, until he is cured, or dies, or is brought back to some port in the United Kingdom, if shipped in the United Kingdom, or, if he had been shipped in some British possession, to some port in that possession, and of his conveyance to such port, and also the expense of his burial, if that is incurred, without any deduction, on account of this expense, from the wages of that master, seaman, or apprentice.

(2.) If, on account of any illness, the master, or any seaman, or apprentice, is temporarily removed his ship, for the purpose of preventing infection, or otherwise for the convenience of the ship, and *subsequently returns to his duty*, the expense of his removal, and of providing the necessary advice, with attendance and medicines, and of his subsistence whilst away from the ship, has to be defrayed in like manner. But where some seamen met with a serious accident on board, in weighing the vessel's anchor, and were taken on shore by the master to a public-house, the master telling the public-house keeper that the owner of the vessel would pay for what the seamen had, and, immediately afterwards, the master hired some fresh hands, and proceeded on the voyage; at the time the seamen were thus committed to the care of the public-house keeper, there was no probability of their being able to resume their duties for that voyage, and they remained at the public-house for several weeks :—in an action against the owner of the vessel for the food and medicines supplied to the seamen, it was held that, as the matters supplied were not necessary for the due prosecution of the voyage, the master had no authority to pledge the owner's credit, and, consequently, that the owner was not liable (Organ *v.* Brodie, 10 Exch., 449).

(3.) The expense of all medicines, and surgical or medical advice, and attendance given to the master, or to any seaman, or apprentice, *whilst on board his ship*, has to be defrayed in like manner.

And (4.) in all other cases, any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman, or apprentice, who dies whilst on service, are to be deducted, when duly proved, from the wages of that seaman or apprentice (§ 228).

As to the necessity of ships carrying medical practitioners, the Merchant Shipping Act enacts, that every *foreign-going* ship having one hundred persons or upwards on board, must carry on board, as part of her complement, some person duly authorised by law to practise, as physician, surgeon, or apothecary; and, in default, the owner incurs, for every voyage made without such a medical practitioner, a penalty not exceeding £100. But nothing in this section affects any provision in the Passengers' Act, as to the carrying medical practitioners by "passenger ships;" nor is such ship, if not required by that act to carry a medical practitioner, required by the Merchant Shipping Act to do so (§ 230).

If any of the expenses in respect of the illness, injnry, or hurt of any seaman or apprentice, which have to be borne by the owner as above mentioned, are paid by any consular officer or other person on behalf of her Majesty,—or if any other expenses in respect of the illness, injury, or hurt of any seaman or apprentice whose wages are not accounted for to that officer in terms of § 209 of the Merchant Shipping Act, are so paid,—these expenses must be repaid to that officer, or other person, by the master of the ship; and if not so repaid, the amount thereof, with costs, is a charge upon the ship, and is recoverable from the master, or from the owner for the time being, as a debt due to her Majesty; and these are so recoverable either by ordinary process of law, or in the summary manner in which seamen are enabled to recover wages. In any proceeding for the recovery of the amount so paid, the production of a certificate of the facts, signed by the consular officer, or other person, together with such vouchers as the case may require, is sufficient proof that these expenses were duly paid by the consnlar officer, or other person, as aforesaid (§ 229).

Having thus seen the statntory regulations for the provisioning and health of the crew, let us now attend to the regulations for preserving and enforcing discipline; and these apply partly to the master and mates, and partly to the seamen and apprentices.

When, by wilful breach of duty, by neglect of duty, or by reason of drunkenness, the master of, or any seaman or apprentice belonging to, a British ship, does any act tending to the immediate loss, destruction, or serious damage of that ship, or tending immediately to endanger the life or limb of any person belonging to or on board

of her,—or who, by wilful breach of duty, by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act, proper and requisite to be done by him, for preserving the ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of that ship from immediate danger to life or limb,—he, for every such offence, is deemed guilty of a misdemeanour (§ 239).

Upon application by the owner of a ship, being within the jurisdiction of any court having Admiralty jurisdiction, in any of her Majesty's dominions, or by the part owner or consignee, or by the agent of the owner, or by any certified mate, or by one-third or more of the crew, and upon proof on oath to the satisfaction of the court, that the removal of the master is necessary, the court can remove him accordingly; and, with the consent of the owner or his agent, or the consignee of the ship,—or if there is no owner, or agent of the owner, or consignee of the ship within the jurisdiction of the court, then, without this consent,—the court can appoint a new master in his stead. The court can also make such order, and require such security in respect of costs in the matter, as the court thinks fit (§ 240).

If the Board of Trade, or any local marine board, has reason to believe that any master or mate is unfit to discharge his duties, from incompetency or misconduct, the Board of Trade can either institute an investigation, or can direct the local marine board at or nearest to the place convenient for parties and witnesses to attend, to institute the same. Thereupon, the persons appointed by the Board of Trade for the purpose, or the local marine board, with the assistance of the local stipendiary magistrate, and if there is not one, of a competent legal assistant appointed by the Board of Trade, conduct the investigation, and can summon the master or mate to appear, and must give him a full opportunity of making a defence either in person or otherwise. For the purpose of this investigation, these persons appointed by the Board of Trade, or the local marine board, have all the powers conferred by § 15 of the Merchant Shipping Act to inspectors appointed by the Board of Trade, and they can make such order with respect to the costs of the investigation as they may deem just; and, on the conclusion of the investigation, they make a report upon the case to the Board of Trade (§ 241).

Where there is no local marine board before which the parties and witnesses can conveniently attend, or where the local marine board is unwilling to institute the investigation, the Board of Trade can direct the same to be instituted before two justices, or a stipendiary magistrate; and thereupon, the investigation is to be conducted, and the results thereof reported, in the same manner and

with the same powers in and with which formal investigations into wrecks and casualties are directed to be conducted, and the results thereof reported under the first division of Part VIII. of the Merchant Shipping Act,—only that, if the Board of Trade so directs, the party bringing the charge of incompetency or misconduct to the notice of the Board, is deemed to be the party having the conduct of the case (§ 241).

In the following cases the Board of Trade can suspend or cancel the certificate either of competency or service of a master or mate:—

1. If, upon an investigation made in pursuance of the foregoing section, he is reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness, or tyranny.

2. If, upon an investigation conducted under the 443d and following sections of Part VIII., or upon an investigation by a naval court constituted in terms of the 260th and following sections of Part III., it is reported that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default.

3. If he is superseded by the order of an Admiralty court under § 240, or by a naval court constituted as after referred to.

4. If he is shewn to have been convicted of any offence.

5. If, upon investigation by a court or tribunal authorised by the legislative authority in any British possession, to make inquiry into charges of incompetency or misconduct on the part of masters or mates, or as to shipwrecks or other casualties affecting ships,—a report is made by that court or tribunal, that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of, or serious damage to, his ship, or loss of life, has been caused by his wrongful act or default, and this report is confirmed by the governor or person administering the government of the possession.

And every master or mate whose certificate is cancelled or suspended, must deliver it to the Board of Trade, or as the Board directs; and, in default, he incurs, for each offence, a penalty not exceeding £50. But, at any subsequent time, the Board may grant to any person whose certificate has been *cancelled*, a new certificate of the same or a lower grade (§ 242).

Let us now pass to the statutory discipline imposed upon the seamen and apprentices, and to the punishment, penalties, and forfeitures by which that discipline may be enforced.

When a lawfully engaged seamen, or an apprentice to the sea service, commits any of the offences now to be mentioned, he is liable to be punished summarily as follows:—

1. For desertion (absolute desertion, and treated by the master as such), he is liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments he has then earned; and also, if this desertion takes place abroad, at the discretion of the court, to forfeit all or any part of the wages or emoluments he may earn *in any other ship* in which he may be employed, *until his next return to the United Kingdom;* and, likewise, to satisfy any excess of wages paid by the master or owner of the ship from which he deserts, to any substitute engaged in his place, at a higher rate of wages than the rate stipulated to be paid to him.

2. For neglecting or refusing to join his ship, or to proceed to sea in his ship, or for absence, without leave, *at any time within twenty-four hours of the ship's sailing from any port,* either at the commencement, or during the progress of the voyage, or for absence at any time, *without leave and without sufficient reason*, from his ship, or from his duty, not amounting to desertion, or not treated as such by the master, he is liable to imprisonment for any period not exceeding ten weeks, with or without hard labour; and also, at the discretion of the court, to forfeit out of his wages a sum not exceeding the amount of two days' pay; and, in addition, for every twenty-four hours of absence, either a sum not exceeding six days' pay, or any expenses properly incurred in hiring a substitute.

3. For quitting the ship without leave, *after* her arrival at her port of delivery, and *before* she is placed in security, he is liable to forfeit, out of his wages, a sum not exceeding one month's pay.

4. For wilful disobedience to a lawful command, he is liable to imprisonment for any period not exceeding four weeks, with or without hard labour; and also, at the discretion of the court, to forfeit out of his wages a sum not exceeding two days' pay.

5. For *continued* wilful disobedience to lawful commands, or *continued* wilful neglect of duty, he is liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour; and also, at the discretion of the court, to forfeit, for every twenty-four hours' continuance of this disobedience or neglect, either a sum not exceeding six days' pay, or any expenses properly incurred in hiring a substitute.

6. For assaulting the master or mate, he is liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

7. For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship, or the progress of the voyage, he is liable to im-

prisonment for any period not exceeding twelve weeks, with or without hard labour.

8. For wilfully damaging the ship, or embezzling or wilfully damaging any of her stores or cargo, he is liable to forfeit, out of his wages, a sum equal in amount to the loss thereby sustained; and also, at the discretion of the court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

9. For any act of smuggling, *of which he is convicted*, and whereby loss or damage is occasioned to the master or owner, he is liable to pay to the master or owner such a sum as is sufficient to reimburse him for that loss or damage; and the whole, or a proportionate part, of his wages can be retained in satisfaction, or on account of such liability, without prejudice to any further remedy (§ 243).

These are the statutory offences, and the punishments for each; and now comes the duty of the master, in making the official log-book an authentic record of such offences as may occur during the course of a voyage. In the first place, upon any of the foregoing offences being committed, there must be an entry of the offence made in the official log-book, and this entry must be signed by the master, and also by the mate, or one of the crew. The offence being thus duly entered, and the entry authenticated,—before the next subsequent arrival of the ship at any port, or, if she is at the time in port, before her departure from that port, the offender, if still in the ship, must either be furnished with a copy of this entry, or have the same distinctly and audibly read over to him. Upon his either being furnished with this copy, or having the same distinctly and audibly read over to him, he can make such reply to that entry as he thinks fit. Then, there must be entered in the official log, a statement that a copy of the entry of the offence in the log-book had been so furnished to the offender, or that the same had been read over to him, and any reply the offender may have made; and this statement must, in like manner, be signed by the master, and also by the mate, or one of the crew (§ 244).

It does not appear to be the intention of the enactments now noticed, to commit the punishment of the offences above enumerated to the master; and, hence, the careful precautions which are prescribed for the due entry of the offence, and the proper authentication of such entry *at the time*. These precautions are clearly intended to constitute this entry in the official log, the foundation of subsequent legal proceedings in the proper court, in order that the statutory punishment may be inflicted by the competent judge; for the concluding part of the same section enacts, that, in any subsequent legal proceedings in regard to the enumerated offences, the entries of these offences, made in the manner before required, must,

if practicable, be produced or proved, and, in default of this production or proof, the court hearing the case can, at its discretion, refuse to receive evidence of the offence.

Every seafaring person, whom the master of a ship is compelled to take on board and convey, under the authority of the Merchant Shipping Act (§§ 211, 212), or of any other act, and every person who goes to sea in any ship, without the consent of the master or owner, or other person entitled to give such consent, must, so long as he remains in that ship, be subject to the same laws and regulations for preserving discipline, and to the same penalties and punishments for offences constituting or tending to a breach of discipline, to which he would be subject if he were a member of the crew, and had signed the agreement (§ 245).

When any seaman or apprentice, either at the commencement or during the progress of the voyage, neglects or refuses to join, or deserts from, or refuses to proceed to sea in the ship in which he is duly engaged to serve, or is found absenting himself from his ship without leave, the master, or any mate, or the owner, ship's husband, or consignee, *in any place in her Majesty's dominions*, with or without the assistance of police-officers or constables, which assistance, if required, they must give; and also, at any place *out of her Majesty's dominions*, so far as the law there in force will permit, can apprehend him without first procuring a warrant; and *can* thereupon, in any case, and *must*, in case he so requires, and it is practicable, convey him before a court capable of taking cognisance (judicial notice) of the matter, to be dealt with according to law. For the purpose of so conveying him before this court, the master, &c., can detain him in custody for a period not exceeding twenty-four hours, or such shorter time as may be necessary; or, if the seaman or apprentice does not require to be so conveyed before the court, or if there is no such court at or near the place, the master, &c., can at once convey him on board. If, however, this apprehension appears, to the court before which the case is brought, to have been made on improper or insufficient grounds, the master, &c., who makes the same, or causes the same to be made, incurs a penalty not exceeding £20; but if this penalty is inflicted, this is a bar to any action for false imprisonment, on the ground of the seaman or apprentice having been apprehended upon improper or insufficient grounds (§ 246). And when a seaman or apprentice is brought before the court, on the ground of his having neglected or refused to join, or to proceed to sea in the ship in which he is engaged, or of his having deserted, or of his otherwise having absented himself from his ship without leave; and if the master, or the owner, or his agent so requires, the court can, instead of committing the offender

to prison, cause him to be conveyed on board, for the purpose of proceeding on the voyage; or can deliver him to the master, or any mate of the ship, or to the owner or his agent, to be by them so conveyed on board for that purpose. In such case, the court can order any costs and expenses properly incurred on account of the offence, by or on behalf of the master or owner, to be paid by the offender, and, if necessary, to be deducted from any wages he has then earned, or that he may afterwards earn under his then existing agreement (§ 247).

When a seaman or an apprentice *is imprisoned*, either for having neglected or refused to join or to proceed to sea in his ship, or for having deserted or otherwise absented himself from his ship without leave,—or for having committed any other breach of discipline,—and should his services, during his imprisonment, and before his engagement is at end, be required on board his ship, any *justice* can, at the request of the master, or of the owner, or his agent, cause that seaman or apprentice to be conveyed on board his ship for the purpose of proceeding on the voyage,—or to be delivered to the master, or to any mate of the ship, or to the owner or his agent, to be by them so conveyed on board for that purpose, although the termination of the period for which he was imprisoned may not have arrived (§ 248).

In all cases of desertion *in any place abroad* (see the 1st branch of § 423, *ut sup.*), the master must produce the entry of that desertion *in the official log-book*, made in terms of § 244, to the person or persons required by the 3d and 4th branches of § 207, to indorse on the agreement a certificate of that desertion; and, thereupon, such person or persons make and certify a copy of the entry in the official log-book, and also a copy of the certificate of desertion indorsed on the agreement. If the person so making and certifying these copies is a public functionary,—a British consular officer,—he must, and in all other cases the master must, forthwith transmit these certified copies to the Registrar-General of Seamen in England. If required, the registrar causes these copies to be produced in any legal proceeding; and, if purporting to be so made and certified, as already mentioned, and certified to have come from the custody of the registrar, these copies are received in any legal proceeding relating to that desertion, as evidence of the entries therein appearing (§ 249).

Whenever a question arises, whether the wages of a seaman or apprentice are forfeited *for desertion*, it is sufficient for the party insisting on the forfeiture, to shew that that seaman or apprentice was duly engaged in, or that he belonged to, the ship from which he is alleged to have deserted, and that he quitted the ship before the completion of the voyage or engagement; or, if the voyage was to

terminate in the United Kingdom and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log-book. Thereupon, and so far as relates to any forfeiture of wages or emolnments under the first division of § 243, *ut sup.*, the desertion is deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge, or can otherwise shew, to the satisfaction of the court, that he had sufficient reasons for leaving his ship (§ 250).

Whenever, also, in any proceeding relating to seamen's wages, it is shewn that a seaman or apprentice has, in the course of the voyage, been convicted of any offence by a competent tribunal, and rightly punished therefor by imprisonment or otherwise, the conrt hearing the case can direct a part of the wages due to that seaman (a term which does not include "apprentices duly indentured and registered"), not exceeding £3, to be applied in reimbursing any costs properly incurred by the master in procuring this conviction and punishment (§ 250).

And when a seaman contracts for wages by the voyage, or by the run, or by the share, and not by the month or other stated period of time, the amonnt of forfeiture incurred is taken to be an amount bearing the same proportion to the whole wages or share, as a calendar month, or other period of time (as in § 243), mentioned in fixing the amonnt of the particular forfeiture, bears to the whole time spent in the voyage; and if the whole time so spent does not exceed the period for which the pay is forfeited, then the forfeiture extends to the whole wages or share (§ 252).

All the clothes, effects, wages, and emoluments which are forfeited for desertion, are to be applied, in the first instance, in or towards the reimbnrsement of the expenses occasioned by the desertion to the master or owner of the ship from which that desertion has taken place; and if these wages and emolnments have been earned subsequently to the desertion, these can be recovered by the master, or by the owner or his agent, in the same manner as the deserter himself might have recovered them, if they had not been forfeited. In any legal proceeding relating to these wages, the conrt can order the same to be paid accordingly, and, subject to the reimbnrsement as before mentioned, the same are paid into her Majesty's Exchequer, in such manner as the Treasury directs, and are carried to, and form part of, the Consolidated Fund of the United Kingdom. In all other cases of forfeiture of wages under the provisions of the Merchant Shipping Act, and in the absence of any specific directions to the contrary, the forfeiture is for the benefit of the master or owner by whom these wages are payable (§ 253). And any question concerning the forfeiture of or dednctions from the wages of a seaman

or apprentice, can be determined in any proceeding lawfully instituted with respect to these wages, although the offence in respect of which any such question arises, though made punishable by imprisonment, as well as forfeiture, has not been made the subject of any criminal proceeding (§ 254).

If, on or before being engaged, a seaman wilfully and fraudulently makes a false statement of the name of his last ship, or last alleged ship, or wilfully and fraudulently makes a false statement of his own name, he incurs a penalty not exceeding £5; and this penalty can be deducted from the wages he earns under the agreement he has entered into, by his wilful and fraudulent false statements. Subject, of course, to this deduction, and subject to the loss and damage occasioned by any previous desertion, this penalty is appointed by the act to be paid and applied in the same manner as other penalties payable under this act (§ 255). I have quoted the words of the enactment, in order to point out to you the absurdity of this enactment.

In regard to the imposition of any fines which have been fixed by the agreement for acts of misconduct by the seamen, the Merchant Shipping Act enacts, that whenever a seaman commits an act of misconduct for which his agreement imposes a fine, and which it is intended to punish by enforcing that fine, an entry of the act of misconduct must be made in the official log-book, and a copy of this entry must be furnished, or the same read over to him; and an entry of this reading over, and of any reply made by the offender, must be made in the same manner, and subject to the same conditions, with respect to offences against discipline under § 243, as before mentioned. The fine must be deducted and paid over as follows:— 1st, If the offender is discharged in the United Kingdom, and the offence and the entries in respect thereof, as now mentioned, are proved, in the case of a foreign-going ship, to the satisfaction of the shipping master before whom the offender is discharged, and in the case of a home-trade ship, to the satisfaction of the shipping master at or nearest to the place at which the crew is discharged, the master or owner deducts the fine from the wages of the offender, and pays the same over to that shipping master. 2d, If, before the final discharge of the crew in the United Kingdom, the offender enters into any of her Majesty's ships, or is discharged abroad, and the offence and the entries in the official log-book are proved to the satisfaction, either of the officer in command of the ship into which he so enters (see § 215, Letter XIX.), or of the consular officer, officer of customs, or other person before whom he is so discharged (see § 207, *ibid.*), the fine is thereupon deducted from the wages of the offender, and an entry of this deduction must then be made in the official log-book, and signed by such officer or other person; and, on the return

of the ship to the United Kingdom, the master or owner must pay over this fine,—in the case of foreign-going ships, to the shipping master before whom the crew is discharged; and in the case of home-trade ships, to the shipping master at or nearest to the place at which the crew is discharged. If the master or owner neglects or refuses to pay over any such fine in the manner above directed, he incurs, for each offence, a penalty not exceeding six times the amount of the fine so retained by him. But no act of misconduct for which a fine has been thus inflicted and paid, can be otherwise punished under the provisions of the Merchant Shipping Act (§ 256).

The statutory rules, which have been before given for preserving and enforcing discipline on board, must be taken to be auxiliary to, and by no means as superseding, the authority which the master has, by the common law, over all the seamen on board his ship, whose duty it is to obey his commands in all lawful matters relating to the navigation of the ship and the preservation of good order. Disobedience to lawful command is an offence of the grossest kind; and a court ought, therefore, to be particularly attentive to preserve that subordination and discipline on board ship, which is so indispensably necessary for the preservation of the whole service, and of every person concerned in it (Robinet *v.* Ship *Exeter*, 2 Rob. Ad. Rep., 264). It is a very old rule, that, in case of disobedience or disorderly conduct, the master can lawfully correct them in a reasonable manner; his authority in this respect resembling that of a father over his son, or of a master over his apprentice or scholar. And it is also a recognised rule, that, in case of gross misbehaviour, the master of a merchant-ship has a right to inflict corporal punishment upon the delinquent mariner; under these equitable limitations, that the punishment must be applied with due moderation, and that, in all cases which will admit of delay proper for inquiry, due inquiry should precede the act of punishment; and, therefore, the party charged should have the universal benefit allowed him, of being heard in his own defence (per Lord Stowell in the *Agincourt*, 1 Hagg. Ad. Rep., 272). In the disorders of a beginning or begun mutiny, where any acts, or attempted acts, of violence or insubordination require to be immediately and promptly repressed, these neither require nor admit of any so deliberate proceedings, and the master is entitled to put the mutiny down by the prompt reaction of lawful force. These are cases of unavoidable necessity, and speak for themselves; but in the case of punishment inflicted on an individual seaman for gross misconduct or misbehaviour, it is a clear matter of prudence that the punishment should be humanely moderate, and only awarded after due consultation and deliberation with the other

officers of the ship. It is a good rule "that passion is not to be indulged in the infliction of punishment, for he who has to command others should first learn to command himself" (per Lord Stowell in the *Agincourt*, ibid., 290); and it should be remembered, that in all acts of discipline and authority, passion is a bad counsellor, and that on such occasions, care is to be taken to suppress even natural and honest feelings of resentment, which may have the effect of transferring a share of the blame belonging to the transaction to the other side of the question (per Lord Stowell in the *Frederick*, 1 Hagg. Ad. Rep., 216).

In any case which you may consider demanding punishment, you should always bear in mind, that where the punishment has been inflicted by an undue excess of authority on your part, or has been undeserved or excessive, you will be liable to an action of damages at the instance of that seaman; and, in this action, it will be incumbent on you to prove, by proper evidence, the particular offence for which the punishment was inflicted, and that the punishment was proper and moderate, and was only imposed after calm deliberation; and therefore, it will not do to rest your defence to such an action, upon acts of misconduct of a different character, or even upon previous acts of similar and habitual misbehaviour.—I am, &c.

LETTER VII.

How voyage must be pursued—By shortest and safest course—No deviation without necessity—Effect of deviation—Instances of deviation—Of intended deviation—It does not matter how long or short deviation be—Or that risk be not increased—Or from what subsequent loss arises—Necessity only justifies deviation—Must be real, inevitable, and imperious—Must be conducted in shortest and most expeditious manner—When vessel driven by storm out of course—Deviation for necessary repairs—Delay in procuring these—To recruit disabled crew, or procure fresh hands—From mutiny of crew—Voyage of necessity, how must be pursued—In general, want of water or provisions no justification of deviation—Alteration of voyage different from deviation—Where particular route prescribed, that must be followed—Where ports or places specified, they must be taken in that order—When not named must be taken in geographical order—Instance of—Under such liberty cannot sail backwards and forwards, but must take places in direct and customary course of the voyage—Calling must be for some purpose connected with and subservient to main scope of voyage—Instances of—Though liberty to touch, &c., be most extensive, yet the purpose must be the accomplishment of the principal voyage insured—Instances as to—Where, from words used, no particular order is to be observed in places of call, these may be taken without regard to geographical order—Instances illustrative of.

Gentlemen,—Now that you are fairly out at sea, the next question is, how are you to pursue the voyage to your port of destination? The general answer is, that, both in regard to the shippers and the insurers, you are bound to proceed to the place of destination by the shortest and safest route, and must not call at any intermediate port, nor voluntarily deviate from the usual and customary course. In your engagement to convey the goods, and in every policy of insurance, whether on the ship, goods, or freight, it is an understood or implied condition, that the voyage shall be performed in the regular and customary track or course, and that there shall be no departure or deviation from that track or course, without a justifiable necessity. If, without such a necessity, you deviate from this course, not only are you liable to the shipper for the value of the goods, should these be afterwards lost, but, from the moment of *actual* deviation from that course, the underwriter is discharged from all subsequent responsibility for loss, though the deviation may not have had the most distant connexion with the cause of that loss. I may here give you an example or two of voluntary deviation, and of the consequences of that deviation.

A vessel was insured from Carron, in the Frith of Forth, to Hull, with liberty to call at Leith on her way down the Forth; she did not call at Leith, but called at Morrison's Haven, a small port a little to the eastward, at which she had not liberty to call, and, after regaining her course, she was lost:—it was held that, from the moment of her deviation, the underwriters were discharged (Wilson

v. Elliot, 26th April 1776, M. 7096–7, Browns, P. C., 459). And, in another case, lime was put on board a barge to be conveyed from the Medway to London, but the master deviated unnecessarily from the proper course, and, *during the deviation*, a tempest was encountered, which wetted the lime, and in consequence, the lime took fire, and the whole was lost: it was held that the owner of the barge was liable for the value of the lime (Davis *v.* Garrett 6 Bing., 706).

In like manner, where, by a charter-party, it was agreed that a ship should proceed to the Cape, and, having delivered goods there, should proceed to Bombay with all convenient speed, and the freighter agreed there to load a cargo of cotton for Europe, the master having the cabin and 'tween decks for his own benefit; the ship arrived at the Cape, and the master might have proceeded on the voyage in two days, but he remained ten, taking in cattle, for the Mauritius, on his own account, which cattle he went round by the Mauritius to deliver; in consequence, he arrived at Bombay six weeks later than he would have done had he proceeded in the direct course of the voyage to that port, and the freighter refused to load. In an action of damages by the shipowners against the freighter, for not loading the cargo, it was held, that as the delay was so long and unreasonable, that, in the ordinary course of mercantile concerns, it may be said to have put an end to the whole object the freighter had in view in chartering the ship, and to have deprived him of the benefit of his contract, that contract may be considered to be at an end, and that, therefore, the freighter was not liable in damages (Freeman *v.* Taylor, 8 Bing., 124). And in another case, where, by the charter-party, the ship was to proceed in ballast from Portsmouth to St Michael's, and bring back a cargo of fruit direct to London, and thirty-five running days were allowed for loading and unloading, to commence on 1st December then next; but in case the vessel should not be arrived at St Michael's, and in readiness to receive her cargo, by the 31st January then next, it was optional with the agent of the freighters whether they loaded or not, and in case they declined loading, then the charter-party was to be null and void. In place of proceeding direct to St Michael's, the ship made an intermediate voyage to Oporto with passengers, returned to Portsmouth, and then sailed for St Michael's, where she arrived before the 31st of January, was loaded with oranges, and arrived in London on 1st February; but, by that time, there was a glut of oranges in the market, and the price had fallen considerably since the end of December, when the London orange season commences. In an action of damages by the charters against the owners, it was held, that as the commencement of the voyage was, by the ship's

going to Oporto, delayed till 6th December, without any justifiable cause, the owners were liable (M'Andrew *v.* Adams, 1 Bing. N. C., 29).

In the instances now given, the deviations may be said to have been *intentional;* but in a question with underwriters, a deviation produced by the *ignorance* of the master will have the effect of discharging the underwriters. Thus, where a ship was insured on a voyage "from London to Jamaica," with instructions to proceed direct to the latter place, but she was driven out of her course to a point between the Grand Canary and Teneriffe, from which situation the direct course to Jamaica was to the *south-west*, instead of taking which, the master bore up for Santa Cruz, to the *north-west* about 30 miles, where he came to anchor, and an embargo was there laid upon the ship; and afterwards the ship and cargo were seized and condemned as prize. In an action against the underwriters, it was held, that the master's going to Santa Cruz was a deviation, and was owing either to ignorance or something else (Phyn *v.* Ro. Ex. Ass. Coy., 7 T. R., 505).

I have now been speaking of *actual* deviation, because an *intention* merely to deviate, or even previous instructions given to that effect, but not carried into execution, will neither charge the owners, nor discharge the underwriters. As where goods were insured on board a vessel from Heligoland to Memel, with liberty to touch at any ports, and to seek, join, and exchange convoy; the vessel sailed from Heligoland, with orders to go to Gottenburgh, which is in the track either to Anholt or Memel, and was captured while in this direct course, before reaching the dividing point; it was held that the vessel, never having reached Gottenburgh, the purpose of going there *was merely an intention to deviate*, which did not discharge the underwriters. (Hesselton *v.* Allnutt, 1 M. S., 56). In another case, pearl ashes were insured from Liverpool to London;—the master also took in goods at Liverpool, which had to be delivered at Southampton, intending to go there first and deliver the goods, which he did, and afterwards proceeded to London; during the first part of the voyage, and before the vessel reached the deviating point to Southampton, she had met with bad weather, and had made much water, which damaged the ashes; but on the voyage from Southampton to London, there were no heavy seas, and the weather was tolerably fair. It was held, that the ashes had sustained the damage before the deviation, and for that damage the underwriters were held liable (Hare *v.* Travis, 7 B. C., 14).

From these two cases you will see, that, although a deviation has been intended, yet, if the vessel actually sails on the route of the

voyage insured, but, previous to the deviating point, damages be sustained, the underwriters are liable. And, if a ship sails with an intention to deviate, by putting into an intermediate port, and, in the course of her voyage, and before she has turned off for the purpose of carrying that intended deviation into effect, she is overtaken by a storm and driven into that very port, this does not amount to a deviation, and produces no alteration in the underwriters' liability. (Kingston *v.* Phelps, 7 T. R., 165.) If, however, a deviation be actually made, it is a matter of no moment how long or how short a time it may occupy, or for how long or short a distance it may be made,—whether for an hour or a month, for one mile or a hundred,—the underwriters are equally discharged from all responsibility subsequent to such deviation. Should a deviation take place, it will make no difference that, had liberty been given to call at the port or place to which the deviation has been made, neither the risk nor the premium would have been greater; because, it is not the increase of risk, but the substitution of another risk, which puts an end to the insurance. It is only the risk of the voyage insured, in the ordinary and common track, and performed in the regular and usual course, which the insurer undertakes, and any departure from such, unless what has been established by long knowledge and usage, will discharge him from his liability. And it is of no consequence from what cause a subsequent loss arises,—whether it be or be not an actual consequence of the deviation,—for the insurer is in no case answerable for a subsequent loss, in whatever place it may happen, or to whatever cause it may be attributed, or whether the insured was or was not consenting to the deviation (1 Mar., 184; 2 Park, 619; 1 Arn., 342).

But, as the sea is a highway, beset with dangers, and causes may arise which compel a deviation from the ordinary and accustomed course of the voyage, I will now shew you what necessity will justify a deviation, remarking, generally, that, in order to this justification, the necessity must be *real, inevitable, and imperious;* and, when a deviation is unavoidable, and absolutely necessary for the safety or preservation of the ship or cargo, or any part of the latter, the deviation must be conducted in the shortest and most expeditious manner.

The first and most obvious cause which will justify or excuse a deviation is, when the vessel is forced by a storm out of the regular course of the voyage, or to take refuge in a port out of that course. But, when such a deviation is thus compelled, you must wait no longer than the necessity requires, and must sail again without delay; although, in this voyage of necessity, the vessel need not return to

that point of the original voyage from whence she was driven, but she is entitled to do the best she can, and can take the shortest course to her port of destination (2 Park, 638 ; 1 Arn., 402).

Another equally obvious cause is, when the vessel has sustained so much damage from storms or stress of weather, that she cannot safely proceed on her voyage without repairs, and, in that case, the master is entitled to go out of the usual course, to the nearest port where these repairs can conveniently be had. But, as this deviation is only justified by the necessity, nothing more must be done than that necessity requires; and only such repairs must be given as can be done most expeditiously, so as to enable the vessel to resume and prosecute her voyage (2 Park, 636 ; 1 Arn., 400). This necessity, however, will not justify an unnecessary delay in getting these repairs executed, nor authorise a trading at that port, although there seems no objection to taking in goods, as additional ballast, or additional cargo, if no additional delay or risk be thereby occasioned (1 Mar., 201).

Should the officers or crew become disabled, by sickness or any other cause, from properly navigating the vessel, and it would, therefore, be dangerous or impracticable to proceed on the voyage, the vessel can put in to the nearest port where medical assistance can be obtained, or other hands procured (1 Mar., 205 ; 1 Arn., 401). But, if the voyage is one for which, by law, a properly qualified medical man is required to be on board, and there is not one of competent skill, suitably furnished with the necessary medicine-chest, and medicaments, and with the requisite instruments, it is very doubtful how far such an excuse will justify such a deviation (Woolf *v.* Claggett, 3 Esp., 256). As has been remarked in the preceding letter, every foreign-going ship (not meaning thereby "passenger ship"), which has one hundred persons and upwards on board, must have on board, as part of her complement, a person duly authorised by law to practise as a physician, surgeon, or apothecary, under a penalty on the owner, for every voyage made without this medical practitioner, of a sum not exceeding £100 (17 and 18 Vict. c. 104, § 230).

Another cause of deviation may arise from the mutiny of the crew ; and when the vessel, through this compulsion, is wilfully carried out of the direct course of her voyage, this deviation will not discharge the underwriters ; as, where a ship and cargo were barratrously carried out of her course by the crew, and the ship and part of her cargo sold, and the remainder sent home by another vessel,—this was held to be a total loss from the time of committing the act of barratry (Dixon *v.* Reid, 5 B. A., 397).

It is the duty of shipmasters to aid and assist ships in distress at

sea; not only the common principles of humanity, but also the interest of all persons connected with the sea, concur in encouraging this praiseworthy duty; and, therefore, although a vessel may go out of her regular course for this purpose, it is not considered a deviation (1 Mar., 204; 1 Arn., 405).

I need not mention the instances of deviation made for the purpose of finding or joining convoy, or with the view to avoid capture or detention, as, at present, there is little probability of such taking place; but you may take it as a general rule that, when a deviation necessarily and justifiably takes place, you must pursue this voyage of necessity in the direct course, and in the shortest time and most expeditious manner possible; and there must be no deviation from such a voyage, because, having become by necessity, and being held in law to be, part of the original voyage, it must, unquestionably, be subject to the same qualifications, and entitled only to the same sort of latitude as that original voyage (1 Mar., 199; Arn., 390). When this justifiable deviation must necessarily be made, from any of the causes now mentioned, you will, of course, enter in your log-book, either at the time, or as soon afterwards as circumstances permit, the causes which render the deviation necessary, and the circumstances attending it, so as that entry, subscribed by yourself, your officers, and some of the crew, may be evidence of the whole particulars attending such deviation. I need scarcely add, that, unless under very particular circumstances, a want of water or provisions will not justify a deviation; as, before sailing, the vessel ought to be fully supplied with water and provisions sufficient for the whole voyage, and should she so sail without being so supplied, she unquestionably is not seaworthy (1 Arn., 402).

But, an *alteration* of the voyage is altogether different from a *deviation from the voyage already commenced;* because a deviation from this line of voyage can only be made after that voyage has actually commenced; but an *alteration* of a voyage previously contracted for, is properly a determination made, or resolution come to, *before* the voyage intended to be insured can be said to have begun; and, therefore, such an alteration necessarily implies an abandonment of that voyage (1 Arn., 344). And, therefore, where a certain voyage is insured, but, before the vessel sails on that voyage, the owners or their agent determine, owing to a change of circumstances, to send the vessel on another voyage, and the vessel sails on this new voyage, and is lost in a course common to both voyages, this determination is an abandonment of the voyage insured, and discharges the underwriters, although the letters containing this intelligence of the alteration, and of the loss of the vessel, were received by the owners on the same day (Tasker *v.* Cunningham; 1 Bligh., 87).

When the charter-party sketches out a particular route for the voyage, this prescribed route must be pursued, calling only at such intermediate ports or places as may be customary and usual in the course of the voyage, or as may be required by the necessity of the trade in which the vessel is engaged. (1 Arn., 351.) If the ports or places at which the vessel is to call or discharge, be specified in the charter-party or policy of insurance, she must call at them, in the same order in which they are so specified, and if they be taken in a different order, this will discharge the underwriters. For example: a vessel was insured at Fisherrow, in the Frith of Forth, to Gottenburgh, and back to Leith and Cockenzie, also in the Forth; on the return, goods were taken in both for Leith and Cockenzie, and the master put into Cockenzie, which is nearest Gottenburgh, without going to Leith, and there the vessel was stranded and lost. In an action against the underwriters, it was held that, as the intended voyage was described in the policy, and as there was no regular and settled course known to all traders, different from that described, the putting into Cockenzie was a deviation, and the underwriters were consequently discharged (Beatson *v.* Haworth, 6 T. R., 531).

Where, therefore, the ports of call or discharge are named, there is no power of going to them in any order you please, or in that order which you may think shortest, safest, or best; but you must take them in the precise order in which they are named in the charter-party or policy of insurance (2 Park, 625; 1 Arn., 357). And if the ports of call are not mentioned in the charter-party or policy, but the words are quite general, as—"at any ports or places whatsoever,"—then, you can only call at ports or places in the ordinary course of the voyage, for a purpose connected with the voyage, and in their geographical order. Thus, goods were insured at and from London to the ship's port of discharge in the Straits of Gibraltar, as high as Messina, with liberty to stop or stay at any ports, and the vessel was freighted with lead from London to Marseilles, and went into Falmouth, where she stayed three weeks, and took in tin for the same place. Before she sailed from London, it was the owner's intention that she was to go directly to Genoa, Leghorn, and Naples; but, when off Marseilles, she could not get in, by reason of contrary winds, but she went to Genoa, and thence to Leghorn; and, on her way back to Marseilles, she was attacked by a privateer, and blown up. In an action on the policy, it was held that, as she did not stop at Marseilles, this was acting contrary to the terms of the policy, for, by her ports of discharge, must be understood the ports at which it was intended goods should be delivered, and the first of these was Marseilles (Clason *v.* Simmonds, 6 T. R. 533, n).

These ports of call must also be taken in the direct course of the voyage; and, in the ordinary case, after having called at one of these ports or places, it will be a deviation again to call at the same port, or to sail backwards and forwards from one to another. Thus, where a voyage was insured "at and from London to Trinidad and the Spanish Main," with liberty "to call at all or any of the West India islands or settlements, St Domingo and Jamaica excepted:"—it was held, that this liberty of calling must be confined to places taken in the direct and customary course of the voyage, and did not protect the ship, after having once sailed southwards as far as Demarara, in then sailing northwards to Martinique and St Thomas's, unless very satisfactory evidence was given that this was a customary course in such voyages as that insured (Gardner *v.* Senhouse, 3 Taunt., 16). But such calling will not be deemed a deviation, if it appear, from the broad terms of the policy, that the purposes of the voyage insured, as therein described, requires such a liberty for duly carrying them into effect;—as where goods were insured "at and from London to the ship's discharging port or ports in the Baltic, with liberty to touch at any port or ports for orders or other purposes, and to touch and stay at any ports or places whatsoever or wheresoever;"—the ship having touched at Carlshamn in Sweden for orders, and having gone on to Swinemunde, a more distant port, for further orders, and having received orders at Swinemunde, as it was unsafe to load there, to return to Carlshamn, and there wait for orders:—it was held, that the ship might so return to Carlshamn without being guilty of a deviation, it having been found that the vessel went to Swinemunde for orders, in prosecution of her voyage, and returned to Carlshamn to obtain further orders as to the ulterior prosecution of the same voyage (Mellish *v.* Andrews, 2 M. S., 27).

This calling at ports in the course of the voyage, must also be for some purpose connected with, and subservient to, the main scope of the voyage. As, where a vessel was insured at and from London to Berbice, with liberty to touch, trade, and stay at any ports and places whatsoever and wheresoever, in the most extensive terms; the vessel arrived with convoy off Madeira, and began immediately to land goods and load wine in exchange, but, before the wine could be got on board, the convoy sailed; the vessel sailed, with several others in the same situation, about a week afterwards, and was captured on her way to Berbice; and, in an action on the policy, it was held that, notwithstanding the extensive terms of the liberty to touch, &c., these must be construed with reference to the main scope of the voyage, and that, by putting into Madeira, and voluntarily staying behind there, for the purpose of unloading goods and loading wine, which did not form part of the subject of insurance, and delay-

ing there for that purpose, till after the convoy had sailed on the voyage, the ship was guilty of a deviation, which discharged the underwriters (Williams *v.* Shee; 3 Camp., 469). Where, also, leave was given in a policy to the ship to call at all or any of the Windward and Leeward Islands, on her passage to New York; but the vessel proceeded to two of the Leeward Islands, for a purpose wholly unconnected with the voyage, this was held to be a deviation which rendered the insurance null, notwithstanding the words in the policy (Hammond *v.* Reid; 4 B. A., 72). And, also, where a ship was insured, "at and from Hull to her port or ports of loading in the Baltic or Gulf of Finland, with liberty to touch or stay at any ports or places whatever for all purposes, particularly at Elsineur, without being deemed a deviation;" the intended port of loading was Pillau, but, before sailing, she took in goods for Elsineur and Dantzic, and stopped on her voyage at both these places *to deliver them*, and was lost before reaching Pillau:—it was held, that the stopping to deliver these goods, being a purpose wholly foreign to the main object of the voyage insured, was a deviation (Solly *v.* Whitmore; 5 B. A., 45).

And, though the terms of the liberty to touch, &c., be most extensive, and wide enough to cover intermediate voyages, yet the ultimate object of these intermediate voyages must be, the accomplishment of the purposes of the principal voyage insured, otherwise these will be a deviation. Thus, a ship was insured, at and from London to New South Wales, and at and from thence to all ports or places in the East Indies or South America, with liberty to proceed and sail to, touch and stay at, or trade, and sail backwards and forwards, and forwards and backwards, in the most ample terms. After arriving at New South Wales, the master received orders to proceed to the East Indies; but, before this, he had engaged for a voyage to New Zealand, and back to New South Wales, on which voyage he sailed, intending to return to New South Wales, and proceed thence to the East Indies; on the way back from New Zealand, however, the vessel was lost; and, in an action on the policy, it was held that, as New Zealand lay entirely out of the course of the voyage from New South Wales to the East Indies, the sailing thither was a deviation (Bottomly *v.* Bovill; 5 B. C., 210). Where, also, a vessel was insured at and from Liverpool, to any port or place of loading and trade on the coast of Africa and Islands, during her stay and trade there, with the most extensive liberty to call, &c., and to be employed and used as a tender to any other ship or vessel in the same employ; the vessel arrived at Benin, on the coast of Africa, where she stayed thirteen months, during which she was employed carrying goods from a vessel in the same employ at the mouth of

the river, to Camaroons, and putting them on board another vessel also in the same employ; but, on her return on her homeward voyage from Camaroons, where she had taken in part of her homeward cargo for an island on the African coast, where she was to put in for further lading, she was lost:—it was held that the voyage to the Camaroons was a deviation, and that it was not acting as a tender within the meaning of the policy (Hamilton *v.* Sheddan; 3 M. W., 49). And where a vessel was insured on a trading voyage, "at and from St Vincent, Barbadoes, and all or any other port of the West India Islands (Jamaica and St Domingo excepted), to her port or ports of discharge and loading in the United Kingdom, during her stay there, and thence back again; during her stay there, and thence back again to Barbadoes, and at any of the West India Islands (Jamaica and St Domingo excepted), until the ship should arrive at her final port as aforesaid; with liberty to the ship in that voyage to proceed to, and touch and stay at any port or places whatever, and to load and unload goods at all places she might call at;"—the vessel arrived at Liverpool, and loaded there a return cargo, consisting partly of coals and bricks, on account of the owners, with which she arrived at Barbadoes; the whole cargo, except the coals and the bricks, was discharged there; and, having taken on board some empty sugar casks, she was ordered to Berbice for a cargo; but was lost in a hurricane, on the night preceding her sailing:—it was held, that, as the cargo had been substantially discharged at Barbadoes, the risk on the ship was at an end at the time of the loss (Moore *v.* Taylor; 1 A. E., 25).

Although, as has been seen, where the ports or places of call are named in the policy, these must be taken in that order, and, when not named, in their geographical order; yet, if it appear from the words used, that no particular order is to be observed in the places of call, then these may be taken without regard to their geographical order. For instance, where a ship was insured on her homeward voyage, "at and from Martinique, and *all or any* of the West India Islands, to London," and the ship sailed to take in her cargo at St Domingo, a place very wide of the direct course from Martinique to London;—this was held to be no deviation (Bragg *v.* Anderson; 4 Taunt, 229). Where, also, a policy was "at and from Antigua to England, with liberty to touch at all or any of the West India Islands, Jamaica included;"—in order to complete her homeward cargo, the ship put into St Kitt's, which lies wide of the direct course from Antigua to London:—it was held, that this was no deviation, for, by including Jamaica, which lies at least 500 miles out of the direct course from Antigua to London, it plainly appeared to be the meaning of the parties, that the islands might be touched at, without regard to their

being on or off that direct course (Metcalfe *v.* Parry; 4 Camp., 123). Where, also, the policy was "at and from Pernambuco, or any other port or ports in the Brazils, to London, beginning the adventure from the termination of the cruize, and preparing for the voyage to London;"—after touching at Pernambuco, and finding she could get no cargo there, the ship sailed to St Salvador, another port in the Brazils, 500 miles to the southward of Pernambuco, in a direction diametrically opposite to the direct course of a voyage from that place to London; and was lost:—it was held, that the policy attached at Pernambuco, and that the alternative, "port or ports," gave liberty of going to St Salvador, without being held a deviation (Lambert *v.* Liddard; 5 Taunt., 480). And, in another case of insurance of goods, where, after naming certain ports, "all or any" of them, leave was given, generally, "to touch, stay, and trade at, all or any ports or places, whatsoever and wheresoever, in the East Indies, Persia (the nearest port of which was more than 1000 miles out of the direct course), or elsewhere;" and the vessel took in part of her cargo at one of the ports named, and proceeded to another port not named, 400 miles to the eastward of the first port, and out of the course, and took in goods there; but she returned to the first port, and sailed for Europe, and was lost:—it was held, that the going to that other port, for the purpose of completing her cargo, was no deviation, and that the goods shipped there were protected by the policy (Hunter *v.* Leathly; 10 B. C., 858).

And in another case, under a policy of insurance on a ship in similar broad and comprehensive terms, the ship sailed from New South Wales in ballast to Batavia, where she took in a cargo of iron for Sourabaya; sailed for that port, discharged her cargo of iron there, and took in a cargo of rice for the Mauritius; at the Mauritius she unloaded part of the rice, intending to load on board there a cargo of cotton for England, but being found, on survey, to be unseaworthy, she was broken up there and sold; the underwriters contended, that the having touched at these different ports for the purpose not only of *loading*, but also of *discharging* goods, was under the terms of the policy a deviation; but on the trial, the jury found, that the ship had not touched at too many places, nor stayed there an unreasonable time, but had pursued the usual course on a voyage of this description; and the court held, that, as the terms of the policy could not be more general and extensive, the vessel having leave to touch at any places whatsoever, for any purposes whatsoever, trading was a purpose (Armett *v.* Innes, 4. B. Moore, 150).

From these instances, you will easily perceive, that, although liberty is given in the policy to touch, stay, and trade at certain

places, this must be always taken as subordinate, or in some way conducive to the principal object of the voyage; and if liberty to "call at" be inserted, you are not at liberty to call at the ports or places, otherwise than in the order mentioned; and, if not mentioned, then they must be taken in their geographical order, unless it appear, from the terms of the policy, that that order is not to be observed. Although this liberty has been held to imply, without express words, a liberty to take in goods, provided no delay take place, and no increase or alteration of the risk be thereby occasioned (Cormack *v.* Gladstone, 11 East, 347), yet the master has thereby only liberty to do so at the usual ports, in the usual course of the voyage, and has no power, in consequence of that liberty, to alter the voyage agreed on or insured for, nor can he adopt any intermediate voyage, not having for its object the accomplishment of the original voyage (1 Arn., 389; Bottomley *v.* Bovill, *ut sup.*) Such liberty will not, however, justify any unnecessary delay, which will be held to amount to a deviation; although, under an insurance at and from,—the time spent in necessary repairs, before sailing, will not be considered any undue delay (Smith *v.* Surridge, 4 Esp., 25).

These may shew you the importance of what I mentioned in a former letter,—being furnished with copies of the charter-parties and of the policies of insurance both on ship and goods; and you should bear in mind that, when you are driven to a port out of the ordinary course of the voyage, from any of the causes already noticed, which justify a deviation, you are not to delay longer than the necessity requires, although it seems that, while detained at that port of necessity, there can be no harm in taking in an additional cargo, provided no additional delay or risk be thereby occasioned.—I am, &c.

LETTER VIII.

Storms and tempests—Goods thrown overboard—What necessity justifies doing so—What must be done preparatory to throwing over—Master ought to act upon his own responsibility—What ought to be done afterwards—Ship and cargo must be actually saved—What articles subjects of and liable to general contribution—General rule—Goods must be thrown overboard—Masts, &c., cut and sacrificed for the purpose of lightening the vessel—And for the good of all—Goods laden on deck—Consequential damages—Damage from stranding—When repairs fall upon owners—When upon general contribution—Damage from winds and seas, &c., fall upon owners—Loss on goods sold in foreign port—Made up by general contribution—Contribution must be made on cargo, ship, and freight—Mode of valuing for contribution on cargo, ship, and freight—Example of mode—Master must be acquainted with the mode of making contribution—Master must detain goods until average paid—Average bond must be executed before goods delivered—Shippers or owners liable—Mere consignee not—In general average bond must be taken—Will foreign adjustment be binding here?—General principle, must be calculated according to law, and usage of port of discharge—When binding in this country—Cases on the point.

Gentlemen,—We have proceeded thus far without encountering a gale; but I need scarcely say, that every one who proceeds to sea must lay his account with being overtaken by storms,—with being exposed to violent gales and hurricanes,—and with running the risk of sunken rocks and lee-shores. These dangers are so common, and the difficulties and responsibilities which may thence arise, are so numerous and important, that every shipmaster ought to be in the full knowledge of what he can do, and of the powers which the maritime law bestows upon him, when, from these causes, he is placed in a situation of distress, or the ship and cargo are in danger.

I will, in the first place, take the case, that the vessel is in so great danger, in a storm, or from some other inevitable cause, that, for the preservation of her and the cargo, it becomes necessary to throw overboard some part of the latter, for the purpose of lightening the vessel. Here, the first question is, under what circumstances can goods be thrown overboard? And the general rule is, that the danger must be imminent,—either from the storm,—from the water that has been shipped,—or from the vessel being driven by a tempest on a rock or shallow,—or from a pirate or enemy pursuing, and on the point of overtaking. But, if the vessel is brought into the state of danger, in consequence of being at first overladen, to such an extent as would prevent her from following the ordinary course of the voyage through a tranquil sea, and goods are thrown overboard in order to lighten her, this is a different matter; and, as I will afterwards shew you, the value of the goods so thrown overboard, cannot be made up by the general contribution now to

be mentioned. There must be an extreme emergency, arising from a cause beyond the master's control, which will warrant him in throwing overboard a part of the cargo, so as to render that part a subject of general contribution. Assuming, then, the necessity for throwing overboard to exist, must there be anything done preparatory to the goods being actually thrown overboard? The continental codes and writers on this subject have indulged in a great deal of speculation on the abstract question of the propriety of throwing overboard, and have divided the throwing overboard into the regular and orderly, or the irregular and disorderly. To any one who knows by experience the hurry and confusion which in such a moment must prevail, it is laughable to talk of a regular and orderly throwing overboard; for, although there may be something approaching to order in the midst of disorder, a throwing overboard in the face of appalling danger, and for the true cause, must be rapid and irregular, without paying attention to order and forms. And it has been well remarked, that where the throwing overboard has been attended with a scrupulous attention to forms at the time of alleged danger, this excites a suspicion rather of fraud, than of honest fear having led to the overthrow. It is seldom, therefore, that any previous consultation or deliberation can be held, and the master must act on his own responsibility, and on the emergency of the moment, without much regard to the observance of forms. Although it will be proper to throw over the heaviest and most cumbersome articles in the first instance, when these can be readily come at, yet this being done will be no proof of the necessity or of the propriety of the act; nor can this selection be expected to be made where, as in the general case, in the hurry and alarm of the moment, every hand is hastening to throw overboard whatever comes within its reach, without regard to order or rule. But, although the time of danger be thus a time of hurry and confusion, which sets all rules and forms at defiance, yet it is a rule, which can be followed in all cases, and which is required in all countries, that, in the first moment of tranquillity, the master shall cause the whole circumstances which led to, and which attended the overthrow, and as particular a specification as possible of the goods thrown overboard, to be entered in the log-book, and subscribed by himself, his officers, and some part of the crew; and that, on the ship's arrival at the first port, these entries be verified by the oaths of the parties subscribing, so as to remove any suspicions that may attend the circumstances of the overthrow, and prevent any opportunity of purloining any part of the goods, under pretence that they were thrown overboard.

I have already mentioned that, where goods are thus thrown over-

board for the preservation of the ship and cargo, and in order to lighten the ship, the value of these goods must be made up by contribution; but, in consequence, the ship and cargo must be actually saved; for, if they should be lost after the overthrow in the same storm, there can be no contribution, because the object for which the overthrow was made, was not attained, and there is nothing upon which a contribution can be levied. If, however, the vessel outlive that storm, and is lost in a subsequent part of the voyage, but part of the cargo is saved, that part must contribute to the loss by the former overthrow, as it is to be presumed that their safety is owing to that former overthrow. Or if the vessel is driven by a storm to take refuge in a strange port, to which she was not destined, and which, in consequence of her draught, she cannot enter, and, in order to lighten her, part of the goods is put into lighters or boats, but are lost in the way to the shore,—the value of these goods must be made up by a general contribution, because they were taken out of the vessel for the sake of lightening her, and for the general benefit. But if, on the other hand, the goods in the lighters are landed safe, and the vessel and the remaining cargo on board are lost, the goods in the lighters so landed cannot contribute to the loss of the ship and the rest, because their safety can in noways be attributed to that loss, nor was their safety the cause of the loss.

It is of importance for you to know, what articles are the subjects of a general contribution, because you will often have to settle or arrange this in the absence of your owners. The general contribution is what is known by the name of general average; and many excellent works have been written on this subject by lawyers and others, both in this and foreign countries. I shall endeavour to simplify it as much as possible.

It is an old rule of maritime law, that the value of what is sacrificed for the benefit of all must be made good by a contribution upon all. In this there are three ingredients: the goods, for instance, must be *thrown* overboard; the masts, sails, or cables must be *cut* and *sacrificed*. If, therefore, the goods are washed out of the vessel by force of the waves, or destroyed on board by lightning, or other causes, the loss falls upon the merchant. If the vessel is dismasted, and the rigging cut away, or if the sails are torn to shreds in a storm, or the master cuts his cable in place of slipping and afterwards recovering it, the loss falls upon the owner. In order to render any subject matter of general contribution, there must be the act and agency of man,—the deliberate purpose of sacrificing the subject for the general benefit.

Another ingredient is, that the sacrifice must be made *for the purpose of lightening the vessel*. If, therefore, goods are thrown

overboard without any adequate cause, or by the whim or caprice of the passengers or crew, there can be no general contribution for these, although the merchant loser may have a claim against the persons who thus wantonly threw them overboard, or against the master or owners, for the value of these. If, also, any part of the vessel be damaged merely from the wind and weather, or in a storm, the loss falls upon the owners alone, and is included under the obligation to keep the vessel tight, staunch, and strong during the voyage,—there has been no sacrifice of a part for the good of the whole.

The last ingredient is, that the sacrifice must be made *for the good of all.* This is the principle on which contribution is made upon all; and, therefore, if the goods were thrown overboard merely because the vessel was too heavily laden for the voyage, this may have arisen from the fault of the shipper or master, but there has been no sacrifice for the common good. So also, where the master has been arrested in a foreign port for the expense of repairs and sound dues, and to procure his liberation he sells part of the cargo, this is not a subject for a general contribution (Dobson *v.* Wilson, 3 Camp., 486); and where, in consequence of springing a leak, a vessel is obliged to put into a port to repair, the expenses of these repairs are not a general average (Jackson *v.* Charnock, 8 T. R., 209); nor where the vessel, by carrying a press of sail to escape from a privateer, suffers material damage, is this general average (Covington *v.* Roberts, 2 B. P. N. R., 378); nor where a vessel's masts and rigging are damaged, and she herself considerably strained, in consequence of carrying a press of sail to avoid being run on shore, is this a general average (Power *v.* Whitmore, 4 M. S., 141).

It is the general practice of this country, as well as established law in many continental states, that where goods have been loaded on deck, and these are thrown overboard, they have not the benefit of a general contribution, unless they have been so carried according to the general usage of a particular trade; but if they are saved, they are liable to this general contribution. Whatever may have been the reasons upon which this rule has been established, it is now common in practice, and is necessary to be attended to in ascertaining the loss by throwing overboard, as well as the property bound to contribute to that loss. It is altogether a different question, how far you and your owners are responsible to the owners of the goods, laden on deck and thrown overboard, for the value of the goods, and the consideration of that responsibility will properly fall under a subsequent letter.

Not only is it the rule, that the direct loss sustained by throwing part of the goods overboard, or sacrificing any part of the vessel, for

the general good, must be made up by a general contribution, but there may be also consequential damages, as they may be called, which have also the benefit of this contribution; as, where, in order the more readily to effect the throwing overboard, part of the deck or sides of the vessel are cut away, or if, in consequence of the overthrow, other parts of the goods are broken, destroyed, or damaged, the value of these must also form part of the general contribution. Where it is necessary, to prevent the ship being cast away in a storm, to cut the cable, or make other sacrifice of her tackle and furniture, the loss of these is also made up by general contribution; but this sacrifice must be carefully distinguished from the loss of a mast, sails, or tackle, on a lee shore, or from the unnecessarily cutting of a cable, when it could have been slipped, and afterwards recovered. Similar losses, incurred to prevent the vessel from running on shore, or upon rocks, or from being run foul of by other vessels, or for getting clear when run foul of, must be made up by a general contribution; and where sails, ropes, and other materials are cut up, and used at sea, for the purpose of stopping a leak, erecting a jury-mast, &c., the value of these also falls under the general contribution.

I will, in the next letter, advert more particularly to what is legally held to be a stranding; but in reference to the subject of general contribution, I would here observe, that it is not every stranding, or running upon a rock or shallow, which makes the damage occasioned to be sustained by a general contribution. If, by any of the perils of the sea, the vessel be stranded, or forced upon a rock or shallow, and damage be thereby done to the vessel, that damage will fall upon the vessel alone, as having arisen from a danger incident to the voyage. But, if the master, knowingly and advisedly, when in danger from a storm, or for the express purpose of avoiding a greater danger, run his vessel aground, or on a rock or shallow, and she be afterwards got off, the damage which may be done by so doing, and the expense of getting her off, including the expense of lightening her, or the value of goods thrown overboard, to enable her to float and continue her voyage, are proper subjects for average contribution. It is rather a difficult and an intricate question, whether, if, in consequence of the vessel being run aground or stranded, the cargo is saved but the vessel is lost, the cargo saved should contribute to the value of the vessel? This is a question beset with difficulties. No case has occurred in this country, in which any decision has been given on it, or approaching to it; although the great majority of foreign authorities are against the opinion, that the subsequent loss of the vessel should be a subject of general contribution. Every instance must depend so much upon

its own peculiar circumstances, that it seems almost in vain to give any general rule applicable to all cases, although, it will be proper to keep this general principle in view, that the vessel must have been deliberately and intentionally sacrificed for the general benefit of all.

Generally speaking, the expenses of repairing injuries which the vessel may have received in a storm, fall upon the owners; but where the vessel cannot prosecute her voyage without repairs, and where the injuries would not have been sustained, had the cargo not been on board, and where the repairs are not to be of a lasting benefit to the vessel, the expense of so much of the repairs as were absolntely necessary for enabling the vessel to perform the voyage, must be made good by a general average (Plummer *v.* Wildman, 3 M. S., 482). And, in the same way must be borne, the expense of going into port for the repairs, the necessary expense of unloading, warehousing, and reloading the cargo, or of men employed in keeping the damaged ship free from water, in order that the cargo might not be damaged. If the injury itself be the subject of general contribution, the port charges, and the wages and provisions of the crew, during the time of the necessary repairs, will also be the subject of a general contribution (2 Arn. 904); but if the injury has been occasioned by the perils of the sea, neither pilotage, nor the wages and provisions of the crew, will fall under the general contribntion (2 Arn. 906).

Thus, damage sustained by the vessel in consequence of high winds and heavy seas, the expenses incurred for pilotage, in putting into port to repair these, and in paying and maintaining the master and mariners, and in raising money for that purpose, are not properly subjects of general contribntion (Power *v.* Whitmore, 4 M. S., 141). Nor, where the vessel springs a leak, and puts into a port to repair, are the expenses of the repair, or the maintenance of the crew, and other necessary charges attending that repair, to be borne by a general contribution (Jackson, *ut sup.*) And where, in effecting her escape from a privateer, in a heavy gale, and the sea running high, the vessel carries a press of sail, by which she is much strained, and her seams are opened, and the head of her mast carried away,—these are not subjects for a general contribution (Covington, *ut sup.*)

The circumstances of necessity which will warrant a shipmaster in disposing of part of the cargo in a foreign port, will be the subject of a subsequent letter; when he does so for the benefit of all, the goods thus sold for the general benefit, are also to be made good by a general contribution.

You have thus seen, what degree of danger will justify you in throwing overboard part of the goods, or sacrificing part of the

vessel, for the general safety, and what subjects are to be made good by a general contribution upon all; and I now proceed to shew you, upon what subjects that contribution is to be made.

That contribution is to be on the cargo, the ship, and the freight.

As to the cargo,—the general rule is, that all merchandise conveyed in the ship, for the purpose of traffic, whether belonging to merchants, to passengers, to the crew, or to the master, of whatever kind, and however small the weight, in comparison of the value, must contribute, whether these are to be carried freight free or not. The goods thrown overboard, and, as I have already said, goods carried on deck, if saved, must contribute. But the persons of neither passengers nor crew contribute for their personal safety; and in this country, the wearing apparel, jewels, and other personal property of the passengers, do not contribute.

The ship contributes to every general contribution, with the exception of her ammunition, provisions, and stores; and the freight and earnings of the voyage contribute, according to their clear amount, after deducting the wages of the crew and the other necessary expenses of the voyage, so that the wages of the seamen do not contribute.

As the settling of a general contribution is a duty generally devolved upon the master, and, at all events, is a duty which he ought to be able to perform, it will be necessary, in the next place, to make you acquainted with the manner in which these subjects are to be valued for that contribution.

The cargo saved is, in general, to be taken at the clear, actual net value, at the port of destination, after deducting the charges attaching to it, such as freight, duties, and landing charges; but neither the premiums of insurance, nor the commissions on the sales. If the vessel has put back to the port of loading, the goods are to be taken at the invoice price, and shipping charges; and the same rules are to be applied for estimating the value of that part of the cargo which was thrown overboard. Should the vessel have been compelled to put into a port short of her destination, and she herself be so much injured as to be unable to proceed, and if no other vessel or means can be found for forwarding the cargo saved, in consequence of which they have to be sold at that intermediate port,—the sum to be taken as the value of the goods is, the actual sum which they have brought at that port, less all the charges of sale.

If the goods saved have been damaged, and are sold in that damaged state, the same rule is applied to ascertain their value,—viz., the proceeds of the sale, less the expenses; and, if the goods saved have been thought not worth the freight, and have, therefore,

been abandoned to the master for the freight,—or if the freight and charges upon the goods exceed the sum which they bring when sold,—or if the goods have been so much damaged as to be worth nothing,—then there can be no contribution from the cargo.

In ascertaining the value of the vessel for the contribution, the tear and wear during the voyage, and the provisions and stores, and any particular average losses, have first to be deducted; then the value of the vessel must be taken, as at the termination of the voyage, or her value may be taken at the commencement, without deducting the tear and wear of the voyage.

The freight is to be taken at the actual sum received by the owner at the termination of the voyage, deducting the seamen's wages, and one-third for petty averages. The freight for the goods thrown overboard, is paid by the general contribution, and must also be included; but if goods for these have been taken in at any intermediate port, the freight of these goods must be deducted from it.

The sum total, upon which the contribution is to be made, is the amount of all these valuations, so ascertained; and each person's share of the loss is that proportion, according to the value of his property, which the whole loss bears to the value of the cargo, ship, and freight. I give you an example of the mode of contribution, from a work of great authority:—

Amount of Losses.		*Value of Articles to Contribute.*	
Goods of A. thrown overboard.....	£500	Goods of A. cast overboard.....	£500
Damage of the goods of B. by the Jettison	200	Sound value of the goods of B, deducting freight and charges	1000
Freight of the goods thrown overboard	100	Goods of C.....	500
Price of new cable, anchor, and mast £300		Goods of D.....	2000
Deduct one-third 100		Goods of E	5000
	200	Value of ship	2000
Expense of bringing the ship off the sands.....	50	Clear freight, deducting wages, provisions, &c.....	800
Pilotage and port duties, going into the harbour and out, and commission to the agent who made the disbursements.....	100	Total of contributing value	£11,800
Expenses there	25		
Adjusting this average	4		
Postages	1		
Total of losses	£1180		

Then, (as) £11,800 (is to) £1180 (so is) £100 to £10.

That is, each person will lose 10 per cent. upon the value of his interest in the cargo, ship, and freight.

Therefore A. loses	£50
B.	100
C.	50
D.	200
E.	500
The owners.....	280
	£1180, which is the exact amount of the losses.

Upon this calculation, the owners are to lose £280, bnt they are to receive from the contribution £380, to make good their disbursements, and £100 more for the freight of the goods thrown overboard, or £480, minus (less) £280. They therefore, are actually to receive £200
A. is to contribute £50, but has lost £500, therefore A. is to receive..... 450
B. is to contribnte £100, bnt has lost £200, therefore B. is to receive 100

Total to be actually received £750

On the other haud, C., D., and E. have lost nothing, and are to pay as before, viz.—

C.....	£50
D.....	200
E.....	500
Total to be actually paid.....	£750

which is exactly equal to the total to be actually received, and must be paid by and to each person, in rateable proportion, to be ascertained by another calculation, with which it is unnecessary to tronble the reader.*

Althongh it is a common practice to put all the papers, documents, and vouchers into the hands of a professional person, called an average-stater, whose peculiar business it is to adjust losses, for the pnrpose of settling this average contribution,—and sometimes this is left to the broker,—yet it is highly proper that you should be quite conversant and well acqnainted, both with the mode in which this contribution is to be adjnsted and settled, and with the practice of doing so; becanse many cases may happen, in which you cannot have the assistance of such persons; and, in all cases, it is absolntely necessary, that yon should have a thorough knowledge both of the principle upon which this contribution is made, and of the practice of actnally calculating the contribntion, and of adjusting it among the different parties interested, according to the amount of the interest of each. I hope the above example will make both quite plain and easy, and, with the assistance of your common sense, may, in almost any circumstances, make the settlement of the loss, and the adjnstment of the contributions to be paid or received by the parties concerned, a matter of mere calculation.

By the maritime law, you have the power of retaining the goods of the different shippers, until the average contributions be settled and paid; bnt, were this power to be actually exercised, it would be the canse of general inconvenience, and even loss; and, indeed, where the price which the goods may bring in a foreign market, has to be taken as their value, you must at once see that this right cannot be enforced. It is the common practice, therefore, for all the parties to enter into an agreement, called an average bond, narrating the particnlars of the loss, and the sacrifices made, and expenses incurred for the common benefit;—that the loss, damages, and expenses, when properly ascertained, may form a charge npon the ship, cargo, and freight; and, therefore, each party binds himself,

* Mr Stevens, in his Essay on Average, is of opinion that the value of the provisions should be dedncted, not from the freight, but from the original value of the ship.—Page 62.

severally, to pay the master, or owners, or their agent, his proportion or share of the general contribution, for the loss and expense, and of all legal charges, salvage, and expenses to which he may be liable. The same agreement, or bond, usually contains a reference to some person named in it, to ascertain the amount of the loss, and to adjust and apportion the different proportions or shares of the contribution which each party has to pay. It is your duty, therefore, to procure this bond, duly executed by all the parties, before you part with the possession of the goods, because you have a lien upon the goods, or, in other words, you are entitled, as already mentioned, to retain them, until each party settles for any average contribution; and, by delivering the goods, or landing them for delivery, you lose this lien, or right of retention. The average bond is considered, in practice, as an equivalent for this lien, and enables you to maintain an action, when necessary, against any or all of the individuals, for their respective proportion of the contribution.

The general rule is, that the shippers or owners of the goods are liable for the contribution falling upon the goods of each, and a consignee, where he is owner, is also liable. But a consignee, who is a consignee only, does not render himself liable for this contribution, merely by receiving the goods under a bill of lading, where it is not made an express condition of the bill of lading, that, by taking the goods under it, he shall be liable for the share of the contribution falling upon the particular goods mentioned (Scaife *v.* Tobin, 3 B. Ad., 523). A condition of this kind is not, however, for common, inserted in bills of lading, although it may be prudent, generally, to do so; but you can easily prevent any trouble or dispute upon this head, by retaining possession of the goods, until each consignee actually subscribe the average bond, where there is one, or, if not, until each give you an obligation, binding himself to pay the proportion of the average contribution effeiring to the goods consigned to him. In this way, either under the average bond, or under the separate obligation, you can recover the proportion even from the mere consignee; but, although you have taken neither, and have delivered the goods to the consignee, the actual owner is, notwithstanding, liable for his proportion of the loss, and that proportion can be recovered by an action against him. But, in the case of a general ship, it is absolutely necessary, in order to avoid the necessity and expense of recovering from each individual merchant, that a regular average bond be executed by all the shippers, before any of the goods are delivered; and, when that bond also names the individual who is to ascertain the amount, and adjust the proportion of the average contribution, his average state fixes the share which each is bound to pay under the bond.

A doubt may very naturally here occur to you, whether, when an adjustment has been made in a foreign country, perhaps on a principle different from that recognised in this country, such an adjustment will be binding upon the shippers and underwriters here. It is a principle established in the courts in this country, that a general average is to be calculated, between the owners of the ship and the owners of the goods, according to the law of the port of discharge (Simonds *v.* White, 2 B. C., 805). If both parties belong to this country, neither can complain of the adjustment being made according to the laws of this country, but where the goods belong to parties of the nation where the vessel arrives, the adjustment must be made according to the laws of the port of discharge, and they cannot complain of that adjustment being made according to the authority of their own laws. Any other rule would, as was remarked by the late Lord Tenterden, in the case now referred to, be attended with great confusion, perplexity, and irregularity, even if it should be found practicable, which, in many cases, it would not be. An adjustment so made, according to the laws and usage of the port of discharge, must be binding on all the parties concerned; but, when an adjustment so made comes to be founded on in this country, it must distinctly appear, that it was made according to the law and practice of that port; and this must not be left to be collected, merely as a matter of inference, from the proceedings under which that adjustment was made. I will detail to you the cases, in which this question has been agitated in this country.

In the case alluded to, the average contribution had been settled at the port of the vessel's discharge in Russia, although it was settled on a different principle from what it would have been in this country, and the merchant had, in order to obtain his goods, been obliged to pay a sum towards the expenses, to which he would not have been liable by our laws; but, as it was proved, that the average had been adjusted and settled according to the law of the country of the port of discharge, the merchant could not recover back from the master the sum so paid, although both the parties were British subjects, and the vessel a British vessel (Simonds, *ut sup.*) And in another case of Russian adjustment, where the contribution was for wages and provisions during a refitment which, in this country, would not have been general average, and, having been paid by the owner of the goods, he brought an action against the shipowner to recover the sum so paid; but the same decision was given as in the preceding case (Dalgleish *v.* Davidson, 5 D. R., 6). But in another case, in which an average contribution had been adjusted and settled in Portugal, a merchant paid his contribution, and brought an action for the sum so paid against the underwriters in this country:—it was found,

that he could not recover, because it was not proved, that the adjustment had been made, according to the known law and usage of that foreign country (Power *v.* Whitmore, 4 M. S., 141).

In another case, a general contribution had been adjusted and settled, according to the law of Denmark, and the holder of a respondentia bond (that is, a bond for money lent upon the security of the goods,) had paid his proportion to that general contribution: it was held, that he could recover from an English underwriter the sum so paid, on his proving that such a security was liable to contribute by the laws of that country (Walpole *v.* Ewer, 2 Mar., 767); And, in another case, the general contribution had been adjusted and settled at Pisa, contrary to the English law, and, under that adjustment, an insured upon goods had to pay a larger share of contribution than, by the law of England, could be demanded; but on the insured proving that it was the usage, in adjusting losses, to allow the whole of such contributions, he was found entitled to recover that sum under an English policy (Newman *v.* Gazalet, 2 Park, 900).

Where, then, an average contribution has been adjusted, and settled at a foreign port, these cases will shew the necessity, for preserving distinct evidence that it was so adjusted and settled according to the law and practice of that country, in case the terms of that adjustment may be afterwards called in question —I am, &c.

LETTER IX.

Stranding—What is the legal meaning of the term in insnrance?—Instances in which accident held to be stranding—Instances in which such accident held not to amount to stranding—These in questions with underwriters—Distinction in such cases, of what is and what is not a stranding—Meaning of the expression in the memorandnm "unless ship be stranded"—Underwriters not liable for partial losses unless she be stranded—But if stranded, nnderwriters liable for all losses, even happening from other causes, thongh not if *before* stranding—These strandings not matter of general average—When damage must be made up by general contribution for a stranding—What are the distinctive characters of such a stranding—It must be for general preservation—Stranding by peril of the sea, by negligence, &c., not such a stranding—This stranding must be a voluntary and an intentional stranding—Example—General rule as to this kind of stranding—Whether if, in consequence of stranding, vessel be lost, this loss is subject of general contribution—Advice to shipmasters.

Gentlemen,—I now proceed to the subject of stranding, as to which a considerable diversity of opinion prevails, both practically and legally, as to what constitutes a stranding; and in many cases, a different opinion has been come to, on a minute distinction of cir-

cumstances. It will be proper to state,—what is considered in law to be the meaning of the word "stranding;"—then to detail some decisions, in which the accident has been held to be a stranding;—and afterwards mention some other decisions, in which it has been held that the accident did not amount to stranding.

In order to constitute a proper stranding, then, in the legal acceptation of the term, it is held, that it must be where the vessel takes the ground, under some extraordinary circumstances of time and place, from accident, or by reason of some unusual occurrence, and out of the ordinary course of the navigation; but, where the event happens, of the vessel taking the ground in the ordinary and usual course of the navigation,—as, for instance, from the common ebbing and flowing of the tide,—or in a tide harbour, from the natural deficiency of water, and she will again float upon the flow of the tide,—this is not to be considered a stranding (Per Tenterden, C. J., and Taunton, J., in Wells *v.* Hopwood; 3 B. Ad., 34). When, therefore, by an unforeseen accident, not in the ordinary course of the navigation, or by the force of the wind and waves, she strikes the ground, or runs aground, this, in the ordinary case, is a stranding, although it is not every striking the ground, or running aground, that will be held to constitute a stranding. And, accordingly, let us now see, what cases have been held to amount to stranding.

In one case, the vessel was in her course up the Mersey to Liverpool, and the pilot, in the absence of the master, and contrary to his caution against letting the vessel take the ground, laid her aground upon a bank in the Mersey; when she floated, he took her into the pier of the basin, and made her fast there, with the intention that she would take the ground when the tide fell; soon afterwards, she took the ground astern, and, the water leaving her, she fell over on the side farthest from the pier, with such violence as broke many of her timbers, though, when the tide rose, she righted, but with ten feet water in the hold, by which the cargo was wetted and damaged:—this was held to be clearly a stranding, because the vessel was both taken out of the usual course, and moored contrary to the usual way, and contrary to the master's orders (Carruthers *v.* Sydebotham, 4 M. S., 77).

In another case, it became necessary, in the course of an inland navigation, to draw off the water, in order to repair the navigation, and a ship, then in that navigation, had to be placed in the most secure situation that could be found; but, when the water was drawn off, she went, by accident, upon some piles which were not previously known to be there:—this was held to be a stranding,—the accident having happened not in the ordinary course of such navigation (Rayner *v.* Goodmand; 3 B. A., 225). Where, also, a

vessel was compelled by tempestuous weather, to take refuge in a tide-harbour, where she was moored alongside a quay in the usual place for vessels of her burden; in addition to the usual moorings, it became necessary to fasten her by tacklings from the masts, to posts on the shore, so as to prevent her from falling on her side when the tide left; but the rope by which she was so fastened not being of sufficient strength, broke when the tide went out, and she fell over on her side,—was stove in,—and greatly injured:—this was held to be a stranding (Bishop *v.* Pentland; 7 B. C., 219).

In one case, a vessel had been forced into Holyhead by a storm; and, in entering the harbour, she struck on a sunk anchor, by which she sprung a leak, and was in danger of sinking, and she had, on that account, to be warped up the harbour, where she took the ground, and remained fast there, for about half an hour:—this was held to be a stranding (Barrow *v.* Bell; 4 B. C., 736). In another case, a vessel had arrived at Hull, which was a tide-harbour, and was proceeding to discharge her cargo, on a quay at the side of it, which could only be done at high water, and the cargo could not be discharged in one tide; the vessel was moored by a rope from her head, to a post, and, on the first ebb, she grounded in safety on soft mud; but, on a subsequent ebb, the rope by which she was moored to the opposite side of the harbour, stretched, and the wind blowing from the east at the same time, she did not ground entirely on the mud, as it was intended she should do,—but her forepart got on a bank of stones, rubbish, and sand, near the quay, by which she was strained, and admitted water, so as to damage the cargo:—although no lasting injury was sustained by the vessel, yet this was held to be a stranding (Wells *v.* Hopwood, *ut sup.*) And, in another case, a ship bound from Nantes to Dublin, was obliged, from stress of weather, to run into the Bay of Palais,—the gale increased, and the master let go the two bower anchors and chains; but in consequence of the large anchor dragging, and for the preservation of the ship, cargo, and crew, and particularly to prevent the ship from going ashore, the master slipped the two cables overboard, got the ship under sail, and succeeded in entering the tidal harbour of Sanzon, where, by reason of its being then low water, she took the ground; she was detained there a month, and floated only eight days in the month, and then at the top of spring tides:—it was held that the ship was stranded in the harbour of Sanzon within the meaning of the usual memorandum (Concorn *v.* Gurney; 1 E. B., 456).

Then, let us next see, what cases have been held as not amounting to a stranding; and, here, you will require carefully to mark the distinction between what has been held to be a stranding, and what has been held not to be a stranding. Thus, where a vessel

struck a rock, and remained on it about a minute and a half after striking,—this was held not to be a settlement of the vessel, for a sufficient length of time, to constitute a stranding,—the striking being nothing more than a "touch and go" (M'Dongle *v.* Roy. Ex. Assnr. Co.; 4 M. S., 503). Again, where a vessel, in the course of her progress up a tide-harbour, with a pilot on board, took the ground, and so remained for eight hours; next day she again took the ground; and a third time, when about to discharge her cargo, and she then lay on her broadside for two whole tides, and thereby the cargo was damaged:—this was held not to be a stranding, but only what would happen in the ordinary course of navigation in that tide-harbour (Hearne *v.* Edmunds; 1 B. B., 338). And, in another case, a vessel had entered the port of Dunkirk, a tide-harbour, and was lying in a place pointed out by the harbour-master; and, upon the ebbing of the tide, she took the ground, in the place where it was intended she should; but, in doing so, she struck upon some hard substance, by which two holes were made in her bottom, and the cargo was damaged:—this was held not to be a stranding,—the vessel having taken the ground merely through the ebbing of the tide, and in the very place where it was intended she should (Kingsford *v.* Marshall; 8 Bing., 458).

All these cases, you will observe, were questions with the underwriters, and not as to damage which has to be made good by a general contribution on ship, cargo, and freight;—to this I will come by and bye. But here, you will attend, that the great distinction, in cases of stranding of the kind now noticed is, that, if the event happen in the ordinary course of navigation,—as from the regular flux and reflux of the tide,—without any external force or violence, it is not a stranding; but, if the vessel takes the ground, out of the usual course of the navigation, and from any extraordinary circumstance of time and place, it is held to be a stranding; and when that is the case, it is a matter of no moment though the accident should have been occasioned by the neglect, rashness, or carelessness of the pilot, or through the negligence of the crew.

These instances of stranding now given, refer to the policy of insurance, in the memorandum at the bottom of which, you will observe, that there are certain kinds of articles enumerated, upon which the underwriters are to be free from all losses under a certain per cent., and certain other articles, upon which they are to be free from all losses, unless or except that loss be of the nature of a general average, or the vessel be stranded. The cases now given apply to a stranding under this memorandum; and, therefore, under it, the underwriters are not liable for any partial loss upon the articles enumerated, when that loss is excluded by the memorandum, unless it

be of the nature of a general average, or happens after the vessel's being stranded. But, if there have been two or three partial losses, on any of the enumerated articles, each of which is individually below the specified per cent., these losses can be added together, so as to make up that per cent. or more (Blackett *v.* Roy. Ex. Assur. Co.; 2 Tyrwh., 266). Although, however, the article is so much damaged as not to be worth the freight, yet, if the cause of damage does not constitute a general average, or if there has been no stranding, and the article specifically remains in existence, the underwriters are not liable, when it is one of the enumerated articles, upon which, as stated in the policy, they are not liable for an average loss, unless it be general, or the ship be stranded. But, where the vessel has been stranded, and a loss sustained in the course of, or subsequent to, that stranding, this takes away the exception, and the articles enumerated in the memorandum are placed in the same situation as any other goods, so that the underwriters become liable for all damage or partial losses sustained by these, though that damage, or these losses may not arise from the stranding, but from some other subsequent cause (1 Mar., c. 7, § 3). Should the goods, however, have sustained damage, or should the loss have happened *before* the vessel is stranded, the subsequent stranding will not satisfy the condition in the memorandum, so as to open up the exception. For instance, hides (one of the enumerated articles) were insured from Valparaiso to Bourdeaux, free of particular average, unless the ship be stranded; the vessel arrived at Rio Janeiro, in the course of the voyage, with the hides in a state of incipient putridity, in consequence of a leak in the vessel, and they were sold at Rio for about one-fourth of their value; subsequently, the vessel was stranded on her way to Bourdeaux, at the entrance of the river Garonne, in France; and an action having been brought under the policy, for a loss by stranding,—it was held, that the stranding was not such as to make the underwriters liable for an average loss (Roux *v.* Salvador, 1 Bing. N. C., 520).

The strandings, of which I have been speaking, and have given you examples, are not the same as that stranding, the damage occasioned by which has to be made good by a general contribution on ship, cargo, and freight. It can never be said that a stranding, in the former sense, is for the common good, the loss by which has to be made up by a contribution on all; for where the stranding has been occasioned by the perils of the sea,—as by the force of the winds and waves, or by the vessel striking on a rock,—the damage thereby sustained cannot be said to have been voluntarily incurred for the preservation of all. The same reason holds, when the stranding has been caused through the negligence or rashness, or even

carelessness or ignorance of a pilot; nor, though the stranding may have been in consequence of the negligence or mismanagement of the crew, or of the mismanagement or ignorance of the master or any other person, in charge of or employed about the vessel, can that stranding be held to have been voluntarily done for the preservation of all. In none of the cases referred to, was the damage occasioned by the stranding, sustained for the common good; but that damage was done by an accident, which, had the master foreseen, he would, as a prudent man, have done all in his power to avoid or prevent. The stranding of which I have been speaking, must have been caused *by accident out of the usual and ordinary course of navigation;* but I come now to treat of another kind of stranding, *which is effected by man* for the preservation of all. The one stranding is altogether *involuntary;* the other is *voluntary;* the one is an *accident*, the other must *not* be an accident. The latter stranding must be a loss incurred, or a sacrifice made, for the general preservation of all, which has to be made up by a contribution upon all; and, therefore, to entitle a loss by this stranding to be borne by a general contribution, that stranding must have been voluntarily sustained, for the common good of the cargo and the ship. In the former kind of stranding, the mind and agency of man were not concerned, or rather, that mind and agency were not exerted in duly managing the vessel, or, if exerted at all, were exerted to avoid the stranding;—in the latter kind, that mind and agency must be exerted in intentionally bringing about the stranding. The vessel must have been deliberately and intentionally stranded—that is, run upon a rock, shallow, or strand—*for the preservation of all.* There must have been a sacrifice for the common good, and that sacrifice must have been made intentionally for this purpose; and the stranding must not be the result of the ordinary perils of the sea. In such a case, and in such only, does the damage sustained by this voluntary stranding, either by the ship or cargo,—the expense of unloading and reloading the cargo when necessary,—and the value of any goods thrown overboard, for the purpose of lightening her, and enabling her to float off the place on which she has been stranded, and so continue her voyage for the benefit of all concerned,—form properly the subjects of a general average contribution, to be borne by all. In the previous instances of stranding, the damage sustained by the ship or cargo must fall upon the respective owners of each, unless when it can be claimed from the underwriters on either, as a particular average; but, the last-mentioned stranding having been done for the preservation of all,—the loss and damage thereby sustained, and the expenses consequently incurred, must be made good by a contribution upon all (2 Arn., 881–5). It is absolutely necessary that you should

rightly understand what is, and what is not, a voluntary stranding, in the proper sense of that term,—for, here, misapprehensions may lead your owners into serious disputes and unnecessary expenses. I will give you an instance from a practical writer on marine insurance, which forcibly ilustrates this distinction.

A vessel on her voyage from London to Hamburgh, was driven by a high tide on a piece of ground very near the latter port; the cargo was unladen, not for the purpose of lightening the vessel so as to set her afloat, but in order to be delivered to the consignees; and the vessel was subsequently dug out;—there, the vessel could not be called on to contribute to the expense of the unloading, although, by being lightened, she was incidentally benefited from the unloading;—neither could the owner of the cargo be called on to contribute to the expense of digging out the vessel, because that was done for her individual benefit; and the cargo having been safely delivered to the consignees, it was a matter of no moment to them whether the vessel floated or not. In this case, then, the damage which the vessel sustained, was not the consequence of a voluntary sacrifice on her part,—the expenses of unloading the cargo were for no common object,—and, therefore, both the damage and expense fell upon the respective owners of the ship and cargo, for whose respective benefits these were incurred, and there was nothing of the natnre of a general average (Beuecke, 215).

The general rule, as stated in a work of great authority, seems to be, that, if the stranding be voluntary, that is, if it be done deliberately and intentionally, to save the ship and cargo, the consequent damage sustained by the ship and cargo, becomes the subject of a general average, which must be borne by a general contribntion upon all. But, if the stranding be involuntary, that is, if it happen from accident, by a peril of the sea, or any other similar cause, though the ship or cargo be damaged, nothing has been advisedly sacrificed for the benefit of all, and, therefore, there can be no general contribution, but each must bear his own loss (Abbot, 490).

In a former letter, I have said, that it is a difficult and iutricate question, whether, if, in consequence of the vessel being, voluntarily and designedly, run aground and stranded, the cargo be saved, but the vessel be totally wrecked in consequence of that stranding, should the cargo so saved be liable to contribute towards the value of the vessel so lost? No case of this kind has occurred, as yet, for decision in the courts of this country, and as it is scarcely possible, on such a subject, to give any general rule, which could apply to the varying circumstances of all cases that will occur, each case should rather, in my humble opinion, be determined by the peculiar circumstances under which each individual stranding was resolved upon, was carried

into effect, and the consequent loss happened. It is, indeed, a question beset with difficulties, although, in considering that question under any circumstances, the general principle must never be lost sight of, that the stranding was voluntarily and designedly done, for the preservation of all. This, therefore, must be the ruling criterion in all cases of voluntary stranding; and, notwithstanding the host of foreign authorities against making the loss of the vessel, in consequence of the stranding, to be a subject of general contribution, yet, I venture to think, that the whole resolves into this question, —Was the stranding the direct or immediate cause of the loss of the vessel? No doubt, the vessel would not be stranded with a view to her total destruction, where it is evident that would follow, if stranding be resolved upon; but, even here, if a vessel be stranded for the preservation of the cargo, under circumstances, or in a situation, which would necessarily imply, or, to all human probability, will be followed by, her total destruction,—is not this just a case within the general rule, of a part having been sacrificed for the benefit of the whole? Take the extreme cases: Suppose, for instance, that the vessel, while in the act of stranding for the general safety, goes to pieces and becomes a total wreck, but, by the stranding, the cargo is saved,—it seems to be altogether against the general principle to hold, that, in this case, the loss of the vessel is not to be made up by a general contribution. But, on the other hand, put a case where the vessel has been stranded properly, and the cargo is in safety, and that, thereafter, by the violence of the wind and waves, or by an increase of the storm, the vessel, from her situation, becomes a total wreck,—in such a case, there seems to be good reason for holding this subsequent loss of the vessel, as not a subject for general contribution. Between these extreme cases, the shadows of distinction must be innumerable; and, as I have already noticed, each case must depend upon the peculiar circumstances in which stranding is resorted to and takes place.

Confessedly, as I now said, this question is beset with difficulties; but, fortunately, it is a question you are not called on to determine, and I have mentioned it merely in order to show you the cautiousness,—to use that term for want of a better,—with which, when a stranding becomes absolutely necessary for the general preservation, that stranding ought to be conducted. Should you be in a situation, at any time, where such a stranding has been resolved upon, you must be careful to preserve evidence of the circumstances in which that stranding was so resolved upon, and also of all that occurs during the actual stranding, as well as subsequent to it. There is little probability of your having the power to select the situation in which to strand the vessel; but should you have, I need hardly say, it

ought to be done in the most eligible situation, as regards the safety both of the ship and of the cargo. Your greatest care must be given to the cargo, particularly if it be a general ship, because the stranding does not put an end to the contract, between you and the shippers, for the carriage of the goods; and if, in order to float the vessel, or to get her off the strand, it be necessary to unload the cargo, or part of it, and should any part be lost or amissing, you must be able to shew that this loss arose solely from the stranding or wreck, otherwise you or your owners will be liable to the shippers for the value of the goods so lost. You must be careful to enter in the log-book all the particulars of the stranding, as well what happened before, as what took place during the course of, and after, the act of stranding, and to attest this entry by the subscriptions of yourself, your officers, or two or more of your crew. At the earliest opportunity, you must make a formal protest before a notary public, in which should be embodied the full particulars above mentioned; and you must also communicate to your owners the full particulars of the stranding, and do not content yourself, as I have known masters often do, with merely informing them that the vessel has been stranded. Indeed it will be prudent, in almost all cases, to send your owners, the principal instrument of protest, or, at least, a transcript of the entries in the log-book, so as to put them in possession of full information, and to enable them to enter into such arrangements with the parties interested, and to take such other steps, as may be necessary. I will have occasion to resume this subject in my next letter.—I am, &c.

LETTER X.

Wreck—Duty of master in case of—Conduct of seamen—Bound to exert themselves to the utmost, and to save as much as possible—No admiral, &c., has power to interfere—Receivers of wrecks and officers who act in their absence—Duties of receiver when ship or boat stranded, &c.—Powers of receiver—Can cause persons plundering, &c, to be apprehended—Can pass through lands and deposit cargo, &c., thereon—Settlement of damages for so doing—Penalty on owner or occupier impeding or hindering—Examination of persons as to wreck—Copies of examination to be reported—Rules to be observed by persons finding or taking possession of wreck—Search by receiver for secreted wreck—Notices to be given by receiver of wreck taken possession of by him—Disposal of wreck—Expenses and fees of receiver—Investigations as to wreck—Applications to justices of peace or stipendiary magistrate—Proceedings under such applications—Assessors of nautical skill and knowledge to justices or magistrate—Remuneration of—Costs of investigation—Disposal of certificate of master or mate—Offences in respect of wreck—Offences by individuals—Persons forcing on board ship stranded or in distress—Taking ship or boat stranded, &c., into foreign port, and there selling the same—Ship or boat, &c., plundered, and damaged or destroyed by mob—How compensation to be made for—Duty of master in consequence of.

Gentlemen,—I now proceed to the subject of wreck; and, at the outset, I may remark, in general, that when wreck has been occasioned by storms or tempests, or by any of the perils of the sea, the consequent loss of the vessel must fall upon the owners alone, leaving them to claim from the underwriters the value they may have insured on the vessel or freight.

At present, I do not intend to consider the principles upon which the individuals, who may assist you in the preservation of the ship and cargo, are legally entitled to be remunerated,—that will be the subject of after consideration;—but, here, I will confine myself to what should be the conduct of yourself and your mariners in the case of wrecks on the coasts of this country, and in what manner you are authorised to proceed.

In the first place, then, your great duty is to keep yourself cool, calm, and collected. Recollect that a weighty responsibility lies upon your shoulders, and that you are, from the necessity of the case, constituted manager and trustee for all parties, and must attend to all, even conflicting interests. Besides, in many instances, independent of being attended with danger, the duties you have to perform to the different parties are arduous, and must be encountered with firmness, fortitude, and perseverance. At such a time, it is not for you to forget that you are still master,—that you are still in right to command, and must be obeyed, and that you are still, even more now than ever, entrusted with the care of the interests of all concerned. It may be thought superfluous,—but I am sorry to say it is not unnecessary,—for me to remark that, in such an emergency,

all your command over your temper and yourself must be exercised; and that, therefore, you must rigidly abstain from the use,—I do not say the *free* use, but the *use* even,—of spirits. This is not a time to fly to or indulge in spirituous liquors, either as a comforter under misfortune, or as giving you fortitude to encounter that misfortune. They will inflame in place of cooling your mind, and will incapacitate rather than strengthen you for the performance of the arduous duties which have necessarily devolved upon you. At such a time, you require to use all the energy you can command, and you must be in a state not only actively to superintend the whole, but to direct and command others. Besides, by having recourse to spirituous liquors, you are setting a bad example to your crew, on whose exertions you ought chiefly to depend, and who, I need not say, are, on such occasions, too anxious to obtain access to the spirit-room.

Again, as to the seamen, they are bound by their contract, to abide by and protect the vessel through all perils; their whole services are pledged to the vessel, and they are bound to use their utmost exertions for the preservation of her and the cargo; and, by the misfortune, your authority over them does not come to an end, nor are they at liberty to leave the wreck until discharged by you. Too frequently, this time of misfortune is considered by them as a time of unbridled liberty; and, not unfrequently, they use that liberty to the worst of purposes. Commonly, their first object is, to get the uncontrolled command of the spirit-room; and I need scarcely remark, to what disgraceful excesses their free use of spirits have been carried on such occasions, and to what melancholy and deplorable consequences, both for themselves and others, these excesses have often led. It may not be in your power, perhaps, altogether to prevent these at the time, but you know how to punish them afterwards. As I have just said, it is the bounden duty of the crew to use their utmost exertions for the preservation of the ship and cargo; they are bound to obey your orders, in relation to both, the same as if these had been in safety; and they are bound to remain as long as you think proper, or as long as there are reasonable hopes of recovering portions of either. Although the crew cannot be considered as salvors, so as to entitle them to salvage remuneration, yet, as the wreck does not put an end to their engagement, they are equally bound, when such a misfortune happens, to do their utmost for the preservation of the ship, cargo, and stores, as they are on any other emergency. And although, by § 185, when the seamen's engagement terminates by reason of the wreck or loss of the ship before the time calculated on in the agreement, they are entitled to their wages for the time of their service previous to its so terminating, yet it should be borne in mind, that if, in case

of the wreck or loss of the ship, it is proved that any seaman has not exerted himself to the utmost to save the ship, cargo, and stores, this prevents any claim which he might otherwise have had for the wages he had previously earned (§ 183). This consideration, therefore, ought to make it both the duty and the interest of every seaman on board, in case of wreck or loss of the ship, strenuously to endeavour to save the lives of his fellow-creatures, from a principle of humanity, and also to save as much of the ship, cargo, and stores, as he possibly can, for his own self-interest. It is foolish to suppose that, in consequence of wreck, the seamen are free from their engagements, and are at liberty to dispose of themselves as they please,—are, in short, their own masters, and can do as they please. They are still your servants;—as such, are bound to do as you command them, and, until discharged by you, are not at liberty to leave the wreck; or should they do so with no intention of returning, you will bear in mind, that this is a desertion working a forfeiture of wages, and of which, if the log-book is preserved, the proper entry should be made and anthenticated.

I am now speaking of a case of general shipwreck on the coasts of this country, on which the vessel becomes a total wreck. In such a case, your first care must be, to save out of the wreck as much of the cargo and of the ship as you possibly can. Generally speaking, you will find plenty of hands ready to assist you, and readier to assist themselves; but you ought to be aware, that you are entitled to repel by force every person intruding or pressing themselves on board without your leave and sanction. You yourself are on no account to leave the wreck; and you know that no admiral, vice-admiral, or any person exercising Admiralty jurisdiction, by or under whatever name or denomination, can as such, or either by himself or his agents, take, receive, or interfere with any wreck (§ 460), except an admiral, &c., who may have satisfactorily proved his title to wreck in a case of unclaimed wreck in this country, and in a question with the receiver (§ 454).

Throughout the United Kingdom, the receiver of wreck in each district has the command of all matters relating to wreck, and of all persons present, unless where the master or his crew are in possession; and during the absence of the receiver from the place where the accident occurs, or in places where no receiver has been appointed, the following officers in succession, each in the absence of the other, in the following order in which they are named, can do all the matters and things which a receiver is authorised to do, with the exception to be aftermentioned:—viz., any principal officer of the customs or of the Coast Guard, any officer of Inland Revenue, any sheriff or justice of the peace, any commissioned officer on full

pay in Her Majesty's naval service, or any commissioned officer on full pay in the military service. But with this exception, that with respect to any goods or articles belonging to a ship or boat stranded or in distress on the shore of the sea, or of any tidal water within the limits of the United Kingdom,—the delivery up of which goods or articles to the receiver is required as will be immediately noticed, —the officer so acting is considered as the agent of the receiver, and must place these goods or articles in the custody of the receiver. No person so acting as substitute for a receiver, is entitled to any of the fees payable to the receiver; but, by reason of his so acting, he is not deprived of any right to salvage to which he would otherwise be entitled (§ 441, 445).

The receiver of the district within which a ship or boat is stranded, or in distress as aforesaid, upon being made acquainted with the accident, must forthwith proceed to the place where the accident has occurred; and, upon his arrival at that place, he takes the command of all the persons present, and assigns to each of these persons such duties for them to undertake and perform, and also issues such directions,—as he shall think fit,—solely, of course, with a view to the preservation of the ship or boat so stranded or in distress, and the lives of the persons belonging thereto, and the cargo and apparel thereof; and if any person wilfully disobeys these directions of the receiver, he forfeits a sum not exceeding £50. But, as already noticed, the receiver has no power to interfere between the master and his crew in matters relating to the management of the ship or boat so stranded or in distress, unless he is requested by the master to do so (§ 441).

With a view to the preservation of the ship or boat, persons, cargo, and apparel so situated, the receiver can do the following things:—(1.) He can summon any number of men he thinks necessary to assist him; (2.) he can require the master or other person having the charge of any ship or boat near at hand, to give such aid with his men, ship, or boat, as may be in his power; and (3.) he can demand the use of any waggon, cart, or horses that may be near at hand. Any person refusing, without reasonable cause, to comply with any summons, requisition, or demand by the receiver so made, incurs a penalty not exceeding £100 (§ 442). And all cargo and other articles belonging to a ship or boat so situated, that may be washed on shore, or otherwise lost or taken from that ship or boat, must be delivered to the receiver; and any person, whether owner or not, who secretes or keeps possession of any cargo or article so washed ashore, &c., or who refuses to deliver the same to the receiver, or to any person authorised by the receiver to receive the same, incurs a penalty not exceeding £100; and the receiver, or

other person as aforesaid, can take any such cargo or article by force from the person so refusing to deliver the same (§ 443).

Whenever such an accident occurs to a ship or boat, and any person plunders, creates disorder, or obstructs the preservation of that ship or boat, or of the lives of the persons belonging thereto, or of the cargo thereof, the receiver can cause that person to be apprehended, and has power to use force for the suppression of any such plundering, disorder, or obstruction as now mentioned, and to command all her Majesty's subjects to assist him in the use of this force (§ 444). And for the purpose of rendering assistance to any ship or boat in distress, or saving the lives of the persons on board the same, or of the cargo or apparel thereof, all persons can, unless there is some public road equally convenient, pass and repass, either with or without carriages or horses, over any adjoining lands without being subject to interruption by the owner or occupier,—doing as little damage as possible; and can also, on the like condition, deposit on these lands, any cargo or other article recovered from that ship or boat. All damages sustained by any owner or occupier in consequence of such passing, or repassing, or depositing, as has been noticed, are a charge on the ship, boat, cargo, or articles in respect of or by which these damages were occasioned; and, in default of payment, are recoverable in the same manner as salvage is made recoverable, as will be afterwards noticed; and if the amount so payable is disputed, that amount is to be determined in the same manner as the amount of disputed salvage is directed to be determined (§ 446).

But if the owner or occupier of the land either (1.) impedes or hinders any person from so passing or repassing, with or without carriages, horses, and servants, by locking his gates, refusing on being requested to open them, or otherwise; or (2.) impedes or hinders the deposit of any cargo or other articles recovered from that ship or boat as before mentioned; or (3.) prevents that cargo or other article from remaining so deposited for a reasonable time, until the same can be removed to a safe place of public deposit; he incurs, for every such offence, a penalty not exceeding £100 (§ 447).

Then, as to the reporting of a ship which may be, or may have been, in distress on the coasts of the United Kingdom, the act directs that the receiver, or, in his absence, a justice of peace, must, as soon as conveniently may be, examine upon oath any person belonging to that ship, or any other person who is able to give any account thereof, or of the cargo or stores thereof, as to the following matters:—

(1.) The name and description of the ship.

(2.) The names of the master and of the owners.
(3.) The names of the owners of the cargo.
(4.) The ports or places from and to which the ship was bound.
(5.) The occasion of the distress of the ship.
(6.) The services rendered.
(7.) Such other matters relating to the ship, or to the cargo on board, as the receiver or justice thinks necessary.

The receiver or justice takes down this examination in writing, and makes two copies thereof,—one of which he sends to the Board of Trade, and the other to the secretary of the committee for managing the affairs of Lloyd's in London, to be placed by him as directed by the act (§ 448). The examination so taken in writing, or a copy of it certified under the hand of the receiver or justice before whom the examination was taken, is admitted in evidence in any court of justice, or before any person having, by law or by consent of parties, power to receive, hear, and examine evidence, as *prima facie* proof,—*i. e.*, proof that may be contradicted of all matters contained in that written examination (§ 449).

Any person finding or taking possession of wreck within the United Kingdom, must observe the following rules in regard to that wreck:—1. If the person so finding or taking possession of the wreck is the owner, he must, as soon as possible, *give notice* to the receiver of the district within which that wreck is found, stating that he has so found or taken possession of the same; and he must *describe* in this notice, the marks by which that wreck is distinguished. 2. If the person so finding or taking possession of the wreck is not the owner, he must, as soon as possible, deliver the same to the receiver as aforesaid. And any person making default in performing the several things of which the performance is imposed upon an owner, he incurs a penalty not exceeding £100. And if he is not the owner, and makes default in performing the several things of which the performance is imposed upon any person not being an owner, 1. he forfeits all claim to salvage; 2. he pays to all the owners of the wreck, if the same is claimed,—but if not claimed, then to the person entitled to such unclaimed wreck, double the value of that wreck,—to be recovered in the same way as a penalty of like amount under the act; and 3. he incurs a penalty not exceeding £100 (§ 450).

If a receiver suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner thereof, or is otherwise improperly dealt with, he can apply for a warrant to any justice of peace, who is empowered to grant a warrant, by virtue whereof the receiver can enter into any house, or other place, wherever situate, and also into any ship or boat, and

search for, seize, and detain any such wreck as aforesaid there found (§ 451). And within forty-eight hours after taking possession of any wreck, the receiver must cause to be posted up in the custom-house of the port nearest the place where the wreck was found or seized, a description of the same, and of any marks by which it is distinguished; and if the value of that wreck exceeds £20, but not otherwise, he must transmit a similar description to the secretary of the committee of Lloyd's, to be by him posted up, in terms of the act, for the inspection of all persons desirous of examining the same (§ 452); and where any admiral, vice-admiral, lord of the manor, or other person, is entitled for his own use to unclaimed wreck found on any place within a district for which a receiver is appointed,—the admiral, &c. must deliver to the receiver, a statement containing the particulars of his title, and the address to which notices are to be sent,—and upon this statement being so delivered, and proof of the validity of the title made to the satisfaction of the receiver,—whenever he takes possession of any wreck found at any such place, he must send, within 48 hours thereafter, a description of the wreck so found, and of any marks by which it is distinguished, directed to such address as aforesaid (§ 454).

In cases where any wreck in custody of a receiver, is under the value of £5, or is of so perishable a nature, or so much damaged that the same cannot, in the receiver's opinion, be advantageously kept,—or if the value thereof is not sufficient to defray the charge of warehousing,—the receiver can sell the same before the expiration of a year from the date at which the same has come into possession of the receiver, as directed by § 475 (*ut infra*),—and the money raised by this sale, after defraying the expenses thereof, must be held by the receiver for the same purposes, and subject to the same claims for, and to which the article itself would have been held and liable if it had remained unsold (§ 453).

To all receivers appointed under the Merchant Shipping Act, there must be paid the expenses properly incurred by them in performance of their duties, and also, in respect of the several matters in schedule V., annexed to the act, and subjoined in the footnote, such fees, not exceeding the amounts therein mentioned, as the Board of Trade may, from time to time, direct, and, for these expenses and fees, the receiver has the same lien, and is entitled to the same remedies for recovery, as a salvor has, or is entitled to, in respect of salvage due him. But, save these expenses and fees, no receiver is entitled, as such, to any remuneration whatever (§ 455). And whenever any dispute arises in any part of the United Kingdom, as to the amount payable to a receiver in respect of expenses

or fees, this dispute must be determined by the Board of Trade, whose decision is final (§ 456).

Hitherto we have been considering the case of wreck generally, produced by physical causes,—by the act of God, as it is termed; but there are cases of wreck which may require a more formal investigation into the accident, such as—1. Where a ship is lost, abandoned, or materially damaged, on or near the coasts of the United Kingdom. 2. When a ship causes loss or material damage to another ship on or near these coasts. 3. When loss of life ensues by reason of any casualty happening to, or on board of, any ship on or near these coasts. 4. When any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive, or are found, at any place in the United Kingdom; and, in such cases, the Merchant Shipping Act provides for investigation being made. The inspecting officer of the coast guard, or the principal officer of the customs residing at or near the place where the loss, abandonment, damage, or casualty occurred, if the same occurred on or near the coasts of the United Kingdom,—but, if elsewhere, at or near the place where any competent witnesses thereof arrive, or are found, or can be conveniently examined, or any other person appointed by the Board of Trade, can make inquiry respecting this loss, abandonment, damage, or casualty (§ 432).

If, either upon or without this preliminary inquiry, it appears to this officer or other person, that a formal investigation is requisite or expedient, or if the Board of Trade so directs, he must apply to any two justices of the peace, or to a stipendiary (paid) magistrate to hear the case. Thereupon, the justices or magistrate proceed to hear and try the case,—and, for that purpose, have the same powers, —so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings,—as if the same were a proceeding relating to an offence or cause of complaint, upon which the justices or magistrate have power to make a summary conviction or order. It is the duty of the officer or person making the application to superintend the management of the case, and to render such assistance as is in his power to the justices or magistrate. Upon the conclusion of the case, the justices or magistrate send a report to the Board of Trade, containing a full statement of the case, and of their or his opinion thereon, accompanied by a report of, or extracts from, the evidence, and any observations the justices or magistrate may think fit to make (§ 433).

Where nautical skill and knowledge are required, the Board of Trade has power,—either at the request of the justices or magistrate, or at its own discretion,—to appoint a person of nautical skill and knowledge to act as assessor to the justices or magistrate; and, on

the conclusion of the case, the assessor either signifies his concurrence in the report above mentioned by signing the same,—or, if he dissents from the report, he must signify to the Board of Trade this dissent and his reasons for it (§ 434). And where there is a local marine board, and a stipendiary (paid) magistrate, a member of that board,—whenever he is present, all these investigations must be made before him; and, in respect of these services, there is to be paid to this magistrate such remuneration,—whether by an annual increase of salary or otherwise,—as the Secretary of State for the Home Department, with consent of the Board of Trade, may direct (§ 435). With respect to the costs of any such investigation, or any part thereof, the justices or magistrate can make such order as they may deem just, and these costs must be paid accordingly, and are recoverable in the same manner as other costs in summary proceedings before the justices or magistrate. But if the Board of Trade thinks fit in any case, the Board may pay the expense of the investigation and the remuneration to the assessor (§ 436).

When any such investigation has to be held in Scotland, the Board of Trade can, if it so think fit, remit to the Lord Advocate to prosecute the investigation in such manner as he directs, and with the assistance of such person of nautical skill and knowledge, if he so requires, as the Board appoints for the purpose (§ 437).

The justices or magistrate, or, in Scotland, the person or persons directed by the Lord Advocate to conduct the investigation, may, if they or he think fit, require the master or mate possessing a certificate of competency or service, whose conduct is called, or likely to be called, in question, in the course of the investigation, to deliver his certificate to the justices or magistrate, or to the person or persons directed, as aforesaid, until the conclusion of the investigation. Then the certificate must either be returned to the master or mate,—or, if the report of the case to the Board of Trade, in terms of § 433, is such as to enable the Board to cancel or suspend the certificate under the powers in the 138th section, the certificate is to be forwarded to the Board of Trade, to be dealt with as the Board thinks fit. If the master or mate fails thus to deliver his certificate when so required, he incurs a penalty not exceeding £50 (§ 438).

Having thus shewn you the statutory proceedings for inquiries and investigations in cases of wreck, let us now proceed to another division of the statutory provisions as to *offences* in respect of wreck.

And, in the first place, as to offences by individuals in regard to wreck, the Merchant Shipping Act enacts, that every person, who (1) wrongfully carries away or removes any part of any ship or boat stranded, or in danger of being stranded, or otherwise in

distress, on or near the shore of any sea or tidal water, or any part of the eargo or apparel thereof, or any wreck; or (2) endeavours in any way to impede or hinder the saving of the ship, boat, eargo, apparel, or wreck; or (3) seeretes any wreck, or obliterates or defaees any marks thereon,—he incurs, for eaeh such offence, a penalty not exceeding £50, in addition to any other penalty or punishment he may be subjeet to under the Merehant Shipping Aet, or any other aet or law (§ 478).

And every person, not being a receiver, or a person authorised, as already mentioned, to take the eommand in cases of ships being stranded or in distress, or not acting under the orders of sueh receiver or other person,—who, without the leave of the master, endeavours to board any ship or boat stranded, or in danger of being stranded, or otherwise in distress, on or near the shore of any sea or tidal water,—incurs, for each such offenee, a penalty not exeeeding £50, and it is lawful for the master of that ship or boat to repel by force any person so attempting to board the same.

If any person takes into a foreign port or place any ship or boat stranded, derelict (abandoned), or otherwise in distress, on or near the shore of the sea, or of any tidal water situate within the limits of the United Kingdom, or any part of the eargo or apparel thereof, or anything belonging thereto, or any wreck found within the foresaid limits, and there sells the same, he is guilty of felony, and is subject to penal servitude for a term not exceeding four years (§ 479).

These are the statutory offenees in regard to wrecks, which individuals may commit as by themselves; but the Merchant Shipping Aet also provides for eompensation being made, where similar offenees are committed by a mob, or riotous assemblage of people, who may be unknown, and from whom, therefore, it would be in vain to expeet penalties. Consequently, it is enacted, that whenever any ship or boat is stranded, or otherwise in distress, on or near the shore of any sea or tidal water in the United Kingdom, and such ship or boat, or any part of the eargo or apparel thereof, is plundered, damaged, or destroyed by any persons riotously and tumultuously assembled, either on shore or afloat, to the owner of that ship, boat, cargo, or apparel, full eompensation must be made as follows:—In England, by the inhabitants of the hundred, wapentake, ward, or district, in the nature of a hundred, by whatever name denominated, in or nearest to which the offenee is eommitted, in manner provided by the aet 8 Geo. IV., e. 31. In Ireland, by the inhabitants of the county, county of a eity or town, barony, town or towns, parish or parishes, in or nearest to whieh the offence is committed, in manner provided by the act 4 Will. IV., c. 37; and in Seotland, by the in-

habitants of the county, city, or borough, in or nearest to which the offence is committed, in manner provided by the 1 Geo. I., st. ii., c. 5.

It is unnecessary to trouble you with the provisions of the acts as to the mode of obtaining compensation in any of the cases now mentioned, because, should you be shipwrecked on the shores of the United Kingdom, and should you be beset by a riotous and tumultuous multitude, which your crew cannot keep off or restrain, your course must be to observe, as narrowly as you can, their proceedings, so as to form as correct an estimate as possible of the plunder they carry away, and of the damage or destruction they occasion, as distinguished from the loss and damage produced by the shipwreck,—then to draw up a detail of the proceedings of the mob, and of the extent of the plunder, or of the damage or destruction, which you verify upon oath before the nearest magistrate,—and thereafter, to put this document, with all the requisite information, into the hands of some respectable professional person, in order that he may recover full compensation from the proper quarter.

In a previous part of this letter, I have said, that in case of wreck, you must on no account leave that wreck, and expose the ship and cargo to pillage. It is your duty to take energetic measures for saving all you can; and, in doing so, you will, no doubt, ask and readily obtain the advice and assistance of the nearest agent of Lloyd's. You should bear in mind, however, that Lloyd's agent is no official person, and has no authority to act in any emergency. He is merely the private agent of the underwriters at Lloyd's; and although he, as such, may give his advice and assistance, he need not do, and ought not to do, anything more. It is a foolish notion, therefore, to think that, by putting the wreck under the charge of an agent of Lloyd's, you either have done your duty, or freed yourself from responsibility. You are a common carrier, and your duty as such is, to deliver safely the goods entrusted to you. The wreck does not relieve you of your strict responsibility as a carrier, and you are bound, to the utmost of your power, personally to use every endeavour for the preservation and safety of the wreck. I again repeat, therefore, that on no account you must leave the wreck, until you have used all means of recovering, saving, and preserving all that can possibly be recovered, saved, and preserved; and you ought not to leave the wreck under the charge of any person whatever, whether an agent of Lloyd's or whoever else. You have already seen whom you can call upon officially for assistance, and who can summon the necessary assistance, and these are entitled to remuneration as salvors merely, but they certainly are not entitled, and it would be folly to allow them, to take the charge

over your head, or even with your consent,—as their doing so may increase, but never can lessen, the responsibility which attaches to you.

As, then, your first duty is, to save and preserve as much of the vessel and of the cargo as you possibly can, your next duty must be to enter in the ordinary log-book all the particulars, from first to last, attending the wreck and the preservation of it, including the conduct and exertions of the crew, and the exertions and names of the salvors. If the log-book has not been saved, you should draw up, on the spot, if the materials can be obtained, or at the nearest place where they can be so, a full statement of all these particulars; and the entry in the log-book, or this statement, must be authenticated by yourself, your surviving officers, and two or more of the crew.

Having thus taken every precaution to insure the safety and preservation of all that can be saved of the ship and cargo, and adopted the proper means for preserving evidence of what took place previous to, during the time of, and subsequent to the wreck,—your next duty is, to find out the nearest notary-public, and cause him to take a formal protest, in which must be embodied an almost verbatim copy of the entries in the log-book, or the other written statement, enlarged, if necessary, and to the truth of this protest, you, your officers, and two or more of your crew, must make solemn affirmation. It is absolutely necessary, therefore, that this protest contain nothing but a true statement and honest declaration of the truth, and of the facts, as these actually occurred, and of the conduct which, under the circumstances, you thought proper and necessary to follow. But then, although this protest is certainly very necessary, so as to shew that everything has been done in an honest and straightforward manner, yet this protest is not of such primary importance as to induce you to leave the wreck, and travel perhaps to a distance, merely for the sake of so protesting. A protest is merely a matter of secondary evidence, and, of course, of secondary consideration. For, although your information to the notary may be nothing but the truth, it is not evidence in a court of law, either for you or your owners, of the statements made in the protest, or of the truth of these statements, but it may be used as evidence against you and your owners; and, therefore, whether you protest or not, is not a matter of that importance to require you to leave the wreck on any account, until you have done your utmost to save and protect as much as you can (Abbot, 380).

At the same time, you must communicate to your owners, and indeed, it would be proper to do so also to the shippers or consignees, and to the underwriters, when known, a full account of what has

happened. You ought to send your owners the notary's instrument of protest, and if that cannot be obtained in time, to forward to them a copy of the entry in the log-book, or of the written statement, which you had drawn up and attested by yourself, your officers, and part of your crew, and which ought, at all events, to accompany your letter. An abandonment made by you before the notary is of no earthly avail; but as by the wreck you are constituted agent for your owners, the shippers, and the underwriters, and are bound to do the best in your power for the interest of all concerned, it is clearly your duty to put these parties in possession of full information, so as to enable them to judge and act for themselves.

With regard, again, to the cargo saved, your duty is, in the first place, to attend to its safety and preservation. Having done so, you ought to wait for instructions from the owners or the underwriters, as to your future proceedings; and you ought not to think of selling or disposing of it, before you receive these instructions. By the Merchant Shipping Act, the Commissioners of Customs and Excise are required to permit all goods, wares, and merchandise saved from a vessel stranded or wrecked on its homeward voyage, to be forwarded to the port of its original destination, and also to permit goods, &c., saved from any ship stranded or wrecked on an outward voyage, to be returned to the port at which the same were shipped,—taking security for the due protection of the revenue in respect of such goods, &c. (§ 5). Your duty, therefore, is plain, —to take care of the preservation and safety of the goods,—to hold them as the carrier,—and to await and obey the instructions of the owners or underwriters. In this country, a few posts, at most, will convey to the owners a knowledge of your situation, and a few other posts will bring to you their intentions and instructions as to these goods. It can scarcely be supposed that any pressing necessity will exist for your disposing of the goods in the meantime, and as little can it be supposed that the goods, if worth saving at all, would be so much damaged, as to render it absolutely necessary so hastily to dispose of the goods for the purpose of paying the salvage claims, as the property so saved will be under the control and in the custody of the receiver, or of an officer of the customs, for the benefit of all concerned.

I have already said, that the seamen are bound to abide by the ship, and to use their utmost endeavours to save as much of it, and of the cargo, as they possibly can. If they do so, they receive no compensation in the name of salvage, for these services, but they are entitled to their wages up to the time of their leaving the wreck. Although the seamen's right to wages is not now dependent on the earning of freight, and when a seaman or apprentice would be

entitled to demand and recover wages, if his ship had earned freight,—he is now entitled, subject to all other rules of law and conditions applicable to the case, to claim and recover his wages though freight has not been earned; but yet, in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores, bars his claim (§ 183). You know, that all stipulations in the agreement, by which a seaman consents to abandon his claim for wages in case of the loss of the ship, are wholly inoperative (§ 182), and, therefore, where his service terminates before the period contemplated in the agreement, by reason of the wreck or loss of the ship, he is entitled to wages for the time of his service prior to that termination, but not for any further period (§ 185). Most probably you will have no funds, and no credit for raising funds, with which to pay the men their wages, but you can, at all events, draw upon your owners and deliver to each seaman a bill for the amount due him, or, in a case of urgent necessity, you may sell as much of the wreck as will enable you to discharge these claims for wages. Upon discharging the seamen from the wreck,—which you ought to do as soon as, but not before, all has been saved that can be saved,—you have to grant each of them a certificate, in terms of the act, stating the period during which they have served on board, the time and place of discharge, and the cause of that discharge, and, if the exertions of any of them in saving parts of the wreck and cargo have been meritorious, these exertions should be noticed most favourably in your certificate (17 & 18 Vict., c. 104, § 172).

It will be highly proper to obtain, as early as possible, surveys of the ship and cargo. If the ship has become a mere wreck, or just a mere assemblage of planks and timbers, it will be of little utility to have a survey of it, as the prudent course is, for you or your owners, or the underwriters, afterwards to dispose of these where they lie; but if the vessel still retains the character of a ship, and is capable of repair, both ship and cargo saved ought to be surveyed by competent persons, and a report of the survey made upon oath, to the competent authority, by whom these surveyors may have been appointed. Whatever these surveyors may recommend,—whether that the vessel should be repaired or sold, or that the cargo being perishable, or much damaged, should be sold,—it will be your duty to forward copies of these surveys to your owners, as well as to the shippers and consignees, or the underwriters, and allow them to determine what is best to be done. At all events, it will not be prudent for you, in such circumstances, to take any steps for selling either the vessel or the cargo, without their instructions. You are merely an agent for all parties, and, as such, bound to do the best

yon can for the interests of all concerned; and yon mnst, therefore, act as an honest man would do, were he the owner of the whole, and nninsured. No doubt, you will find Lloyd's agent, whose duty it is from his appointment, to give his advice and assistance in such cases, and to superintend and protect the interests of all, as well as other respectable parties,—willing to give you their advice and assistance; bnt while you will, in all likelihood, avail yourself of such advice and assistance, so far as proper, you, as a common carrier, should always bear in mind, that you must act npon your own responsibility,—and, therefore, yon must follow that advice, only in so far as you yourself think it should be adopted, and avail yourself of that assistance, only in so far as you see it will be conducive to the general good.

Thus far as to the case of wreck; and let ns now go on to the consideration of salvage services and of salvage remuneration.—I am, &c.

LETTER XI.

Salvage—Legal meaning of term—What are salvage services—Crew's exertions not salvage services—Unless in rescuing from enemy or pirates—Pilotage not a salvage service—What are pilotage services—Salvage by and to steam-ships—Salvage in United Kingdom—Salvage by other person than receiver—Salvage for preservation of life—Disputes as to salvage in United Kingdom—If sum claimed does not exceed £200, *must* be referred to two justices—If it exceed that sum, *may* be so referred, or decided by Court—Powers of justices—Appointment and payment oversman—When award of justices and oversman must be made—When salvage does not exceed £200, payment to and distribution by receiver—Detention of ship, &c., by receiver until payment of salvage—When exceeding £200, bond and security given for—Proceedings on bond—Sale of ship, &c., by receiver—Claim by owner of wreck within one year—If no such claim, delivery to admiral, &c., who has given notice—If no claim or notice, sale by receiver—Jurisdiction of High Court of Admiralty—Salvage by ships of Royal Navy—Consent of Admiralty to claim for salvage by commander or crew—Salvage services rendered out of United Kingdom—Disposal of property saved—Statements by salvor and master—Particulars of—Consular officer or judge fixes amount—Bond to be granted—If property salved not owned by persons resident in her Majesty's dominions—Written agreement to abide decision of Admiralty Court—Bond and security to be given—Apportionment of salvage—Duties on foreign goods wrecked—Goods importing to be forwarded, and exporting to be returned—Possession of property salved by salvors—Parties liable in payment—subjects liable to pay—Principles which regulate amount of salvage and remuneration.

Gentlemen,—I now proceed to the consideration of what are properly salvage services, and the remuneration which should be awarded these, in so far as the former do not fall under, and the latter is not regulated by, the Merchant Shipping Act. At the outset I may remark, that the term *salvage* is, in common language, used indiscri-

minately, to denote both the acts of saving the ship or cargo, and the reward or remuneration allotted to the salvors for so doing; but this is not the proper or the legal meaning of this word, as has been well remarked by a very competent judge (per Lord Stowell, in the Jonge Nicolas, 1 Hag., 208): the statutory meaning of the term "is confined to the remuneration allotted to salvors, under the name of salvage, for a direct salvage bounty, and in which they have the sole interest; and it does not go beyond that part of the cargo which may be sold for their express benefit." Although, therefore, in the following letter, the term salvage will be applied to both the services performed, and the remuneration which is to be made for these services, yet you will understand, that the proper and legal meaning of the term is only applicable to the remuneration allotted to the salvors as the reward for their services.

Let us see, then, in the first place, what are properly salvage services. And, in order to constitute salvage services, it seems to be the general rule, that these services must have been rendered to a vessel or her cargo or stores while in danger, or in an impending danger, by which they are saved or recovered from that danger, or after having been abandoned, or actually lost. When, in such circumstances, aid and assistance has been sought and obtained, and the necessary services have been effectively rendered, these are truly salvage services, and the remuneration to be awarded must be estimated according to the extent of labour employed, and of danger incurred. In such an emergency, then, it is necessary to know who, in law, are held to be really salvors, and, as such, entitled to remuneration for their salvage services.

In this emergency, therefore, and assuming all statutory laws and regulations to be laid aside, and that your are necessitated, in such case, to act on your own responsibility,—it is of course, necessarily implied, that you avail yourself of all the assistance you can command, and that assistance will naturally be looked for, in the first instance, from your own crew. As already remarked, the crew of vessels in distress are bound to use their utmost endeavours to save her and the cargo and stores from danger, but the services so rendered by them are not always salvage services, nor are they rewarded as salvors. Neither are the exertions made by some of the crew of a vessel, in rescuing her from the power of another part who had mutinied, to be considered as salvage services (Governor Raffles, King, 2 Dod., 14); but, when the crew, or part of the crew, rescue the vessel from the hands of an enemy, or from pirates, this is held to be a salvage service, entitling them to a salvage remuneration (The Beaver, Connor, 3 Rob., 292).

Pilotage is not to be confounded with salvage services, unless the

peculiar circumstances of any special case distinguish the services so performed from general pilotage services. If extraordinary pilotage services have been rendered to a vessel in distress, an additional pilotage is the proper rate of reward for these; and where the character of a pilot has been assumed, the party doing so is to be remunerated according to the rates for pilotage services, and not as a salvor (The Enterprise, Crosbie, 2 Hag., 178). Ordinary towage, where necessary, is performable by the pilots in charge, and is the service rendered by them in expediting an undamaged ship on her voyage,—for which the ordinary reward is payable as the proper compensation for that towage service; and where there is an agreement for the extraordinary towage of a disabled ship, with a full knowledge of the state of the vessel,—in that case, no addition to the agreed on reward is to be made, whatever may be the circumstances (The Kingaloch, 18 Jnr., 409. The Kilby, *n. Ibid.*) But guidance to a place of safety of a vessel out at sea beyond pilotage ground, is not pilotage, but salvage service (The Hedwig, 17 Jur., 977). Should pilots not make a fair trial to get off to a vessel in distress, during two days, when there might have been danger and difficulty, but go off on the third day, when there was no difficulty, as the weather was moderate, and the wind fair for the harbour, this did not amount to a salvage service, but to pilotage only (City of Edinburgh, Fraser, 2 Hag., 333).

In consequence of the great power of steam-vessels, and the complete control under which these are, the effective salvage services and assistance of such vessels to ships in distress, are to be encouraged, and additional remuneration is allowed to such (Raikes, Gardiner, 1 Hag., 246). And it is allowed upon this principle:—That when steamers render salvage service, they are entitled to a greater reward than any other set of salvors who render such service,—being able, in consequence of the power they possess, to perform such services with infinitely greater celerity than other vessels, —with infinitely greater safety to the vessel in danger,—and frequently under circumstances in which no other assistance could by possibility prevail (Per Dr Lushington in the Kingaloch, *ut sup.*) And, accordingly, in a value of £12,246,—£1000 were awarded to a steamer as salvage, for towing a vessel,—in a most helpless state, and in most imminent danger,—to a place of comparative safety,—the stipulated payment to a steamer hired to bring her into port, being the criterion for the salvage remuneration. (Traveller, M'Clear, 3 Hag., 370.) And where a government steamer assists a merchantman, under a stipulation to reimburse all expenses arising from damages to the steamer or her stores,—it was held, that such stipulation was no bar to a salvage compensation. (Lustre, Finlay, 3

Hag., 154.) But salvage services, which entitle to a salvage remuneration, must be distinguished from towing, which steam vessels are frequently engaged to do; for, where a vessel, suddenly dismasted, was, while at anchor and with jury masts, taken in tow for nine hours by a valuable steamer, which had been engaged for that purpose,—it was held, that, nautically, the service was towing, without risk on either side (Isabella, Monro, 3 Hag., 427). And, in a case where no danger was incurred by the asserted salvors, and the master and crew of the assisted vessel were not aware of the existence of any danger to their own vessel, but accepted the assistance of a steamer to bring them into port,—and a tender of the usual amount for towage was made for this service:—it was held, that the services did not amount to salvage services, and the tender for towage was affirmed, with costs (The Harbinger, 16 Jur., 729).

Upon the same principle, salvage services to steam-vessels with passengers are to be encouraged, and, in ordinary cases, the remumuneration for these services should exceed a mere proportion of the value. As, where two smacks went out, with enterprise and alacrity, to a steamer, and towed her in, after having taken out and landed the passengers,—out of a value of £1265, the court gave £350 (Ardincaple, M'Leod, 3 Hag., 151);—and salvage remuneration was allowed for the services of 150 boatmen and a steam-tug, to a valuable steamer with passengers, on the rocks inside of Holy Island (The London Merchant, Laker, 3 Hag., 196).

Referring to what has been said in the preceding letter as to inquiries into wrecks,—the duties of receivers in regard to wrecks,—and the disposal of wrecks by the receiver,—let us now see the enactments in the Merchant Shipping Act, as to salvage in the United Kingdom, the 17th and 18th Vict., c. 120 having repealed the previous salvage acts, except certain sections of the 1 and 2 Geo. IV., c. 76, which apply to the Cinque Ports.

The Merchant Shipping Act enacts, that whenever any ship or boat is stranded or in distress on the shore of any sea or tidal water, situate within the limits of the United Kingdom, and services are rendered by any person,—(1.) In assisting that ship or boat; (2.) In saving the lives of the persons belonging to the ship or boat; (3.) In saving the cargo or apparel of the ship or boat, or any portion thereof;—and whenever any wreck is saved by any person *other than a receiver* within the United Kingdom,—there is payable to the person by whom these services, or any of them, have been rendered,—or by whom the wreck has been saved, by the owners of the ship or boat, cargo, apparel, or wreck,—a reasonable amount of salvage, together with all expenses reasonably incurred by him in the performance of these services or the saving of that wreck; and

in case of dispute as to the sum so payable, the amount of the salvage, and of these expenses is to be determined in the manner directed by § 460 as aftermentioned (§ 458).

Salvage in respect of the preservation of the life or lives of any person or persons belonging to any ship stranded or in distress as aforesaid, is payable by the owners of that ship or boat, in priority or preference to all other claims for salvage. Where the ship or boat is destroyed,—or where,—after payment of the actual expense incurred,—the value thereof is insufficient to pay the amount of salvage due in respect of life or lives,—the Board of Trade can, in its discretion, award to the salvors of any such life or lives, out of the Mercantile Marine Fund, such sum or sums as it deems fit, in whole or in part satisfaction of any amount of salvage so left unpaid in respect of the preservation of life or lives (§ 459).

Disputes with regard to salvage arising within the boundaries of the Cinque Ports,* are to be determined in the same manner as hitherto; but when a dispute arises *elsewhere in the United Kingdom*, between the owners of any ship, boat, cargo, apparel, or wreck, as before mentioned, and the salvors, as to the amount of salvage, and the parties cannot agree as to the settlement thereof by arbitration or otherwise,—then, if the sum claimed does not exceed £200, this dispute must be referred to the arbitration of any two justices of the peace resident, in the case of a wreck, at or near the place where that wreck was found,—or in the case of services to a ship or boat or to the persons, cargo, or apparel belonging thereto, at or near the place where the ship or boat is lying, or at or near the first port or place in the United Kingdom to which she is brought, after the occurrence of the accident by reason of which the claim to salvage arises. But, if the sum claimed exceeds £200, the dispute may, with consent of the parties, be referred to the arbitration of two justices as already

* The Cinque Ports are,—Dover, Sandwich, Romney, Hastings, and Hythe, and the two ancient towns are Winchelsea and Rye; and the jurisdiction of the Lord High Admiral and the Lord Warden of the Cinque Ports extends from a point to the westward of Seaford in the county of Sussex, called Redcliffe, including the same,—thence passing in a line one mile without the sand or shoal called the Horse of Willingdon, at the same distance without the ridge and new shoals; and thence in a line within five miles of Cape Grisnez on the coast of France,—thence round the shoals called the Overfalls, and two miles distance from the same,—thence on as far without, and the same distance along the eastern side of the Galloper Sands, until the south end thereof bears west north-west, true bearing, from the west north-west bearing of the Galloper, it runs in a direct line across the shoal called the Thwart Middle, till it reaches the shore under the Maize Tower,—from thence following in a line of the shore, up to St Orsyth in the county of Essex,—and following the course of the shore, up to the river Conr, to the landing place nearest Brightling Sea,—from thence, in a direct line to Shoe Beacon,—from thence, across the waters to Feversham, and from thence following the line of coast round the North and Sonth Foreland and Beachy Head, till it reaches the Redcliff, including all the waters, creeks, and havens between them (1 and 2 Geo. IV., c. 76. § 18).

mentioned; but if they do not consent, it must be decided, in England, by the High Court of England,—in Ireland by the High Court of Admiralty of Ireland,—and in Scotland by the Court of Session. If, however, the parties claiming the disputed salvage, do not recover in the Admiralty Court or in the Court of Session, a greater sum than £200,—they do not recover any costs, charges, or expenses incurred in the prosecution of their claim, unless the court certifies that the case was a fit one to be tried in a superior court. Every dispute with respect to salvage, can be heard and adjudicated upon, on the application either of the salvor or of the owner of the property salved, or of their respective agents (§ 460).

Whenever any dispute as to salvage is referred to the arbitration of two justices, as above, they may either themselves determine the dispute,—and, in such case, they are empowered to call to their assistance any person conversant with maritime affairs, as assessor to them; or, if a difference of opinion should arise between them, or without any such difference, they may, if they think fit, appoint some person conversant with maritime affairs, as umpire or oversman to decide the point in dispute. The justices or their umpire must make an award as to the amount of salvage payable within the following times,—viz., the justices within 48 hours after the dispute has been referred to them,—and the umpire within 48 hours after his appointment. But the justices or umpire have power, nevertheless, by a writing under their or his hand, to extend the time within which they and he are thus directed to make their or his award (§ 461).

The justices or umpire can call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute; and they can examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose (§ 463). And to an assessor or umpire appointed as aforesaid, there must be paid, in respect of his services, a sum not exceeding £5, as the Board of Trade may, from time to time, appoint; and all the costs of the arbitration, including these payments, are to be paid by the parties to the dispute, in such manner, and in such shares or proportions, as the justices or oversman may direct by their or his award (§ 462). By § 464, a power of appeal from an award so made, is given to the Courts of Admiralty in England and Ireland, and to the Court of Session in Scotland.

Whenever the aggregate amount of the salvage for salvage services in the United Kingdom, has been finally ascertained,—either by agreement between the parties themselves, or by the award of the two justices or their umpire,—and a dispute arises as to the appor-

tionment thereof among the several claimants themselves,—if the amount of salvage so ascertained does not exceed £200, the party liable to pay the amonnt so dne, can apply to the receiver of the district for liberty to pay the ascertained amonnt to him the receiver. If the receiver thinks fit, he may receive this amonnt accordingly, and he grants a certificate under his hand, stating the fact of this payment being made, and the services in respect of which it is made; and this certificate is a fnll discharge and indemnity to the person or persons to whom it is given, and to their ship, boat, cargo, or apparel, and effects, against the claims of all persons whomsoever, in respect of the salvage services therein named. Bnt when the amonnt exceeds £200, the salvage is to be apportioned in the manner to be immediately noticed (§ 466). And when an amonnt of salvage, not exceeding £200, has been paid to the receiver, he is to proceed, with all convenient speed, to distribnte the same among the several persons entitled thereto, npon snch evidence, and in snch shares and proportions, as he thinks fit; and he has power to retain any monies that appear to him to be payable to parties who may be absent. But the distribntion so made is final and conclusive against the rights of all parties claiming to be entitled to any portion of the monies so distribnted (§ 467).

Whenever salvage is dne to any person under the provisions before detailed, the receiver acts as follows:—(1.) If the salvage is due in respect of services rendered in assisting any ship or boat,—or in saving the lives of persons belonging to the same,—or the cargo or apparel thereof,—he detains that ship or boat, and the cargo and apparel belonging thereto, until payment of that salvage has been made:—or, (2.) If the salvage is due in respect of the saving of any wreck, and this wreck is not sold as unclaimed, in pursnance of the powers after noticed, he must detain the wreck until payment is made, or process issned as above mentioned. But if, at any time before this process is issned, security is given to the satisfaction of the receiver for the amount of salvage due, he releases from his custody the ship, boat, cargo, apparel, or wreck so detained by him (§ 468).

But when the claim of salvage exceeds £200, any question that arises concerning the amonnt of the secnrity to be given, or the sufficiency of the snreties,—in England, the High Court of Admiralty of England, in Ireland, the High Court of Admiralty in Ireland, and in Scotland, the Conrt of Session, can determine any such qnestion; and, in all cases where bond or other security is so given to the receiver for an amount exceeding £200, the salvor, or the owner of the property salved, can institnte proceedings in any of these conrts, within the jnrisdiction of which the salvage took place, for the pur-

pose of that court deciding upon the questions arising between them, and that court can also enforce payment of the bond or other security (§ 468).

When a ship, boat, &c., is detained by a receiver for non-payment of the salvage sums so due, and the parties liable to pay the same are aware of this detention,—then, in any of the three cases following, the receiver can forthwith sell that ship, boat, &c., or a sufficient part thereof,—viz., (1.) Where the amount *is not disputed*, and payment thereof is not made within twenty days after the same has become due;—(2.) Where the amount *is disputed*, but no appeal lies from the first tribunal to which the dispute is referred, and payment thereof is not made within twenty days after the decision of that first tribunal;—(3.) Where the amount is disputed, and an appeal lies from the decision of the first tribunal to some other tribunal, and payment thereof is not made within the twenty days, as last mentioned, or an appeal taken out, or the necessary proceedings for prosecuting an appeal are not instituted, according to the practice of that other tribunal, within these twenty days. After paying the expenses of the sale, the receiver, out of the proceeds, defrays all sums of money due in respect of expenses, fees, and salvage, and pays the surplus, if any, to the owners of the property sold, or the parties entitled to receive the same (§ 469).

Subject to the payment of these expenses, fees, and salvage, if the owner of a wreck establishes his claim thereto to the satisfaction of the receiver, within one year from the date of the wreck coming into the possession of the receiver, he is entitled to have the same delivered up to him (§ 470). But, if no owner thus establishes a claim to the wreck, before the expiration of the year from the date at which the same has come into the receiver's possession,—then, if an admiral, vice-admiral, lord of a manor, or other person exercising admiralty jurisdiction, has given notice to the receiver, and has proved to his satisfaction, that he is entitled to wreck found at such place, the receiver delivers up possession thereof to that admiral, &c., upon payment of all expenses, fees, and salvage due in respect of the wreck so delivered (§ 471). And if no owner thus establishes his claim to wreck, before the expiration of a year as aforesaid, and if no admiral, &c., or person other than her Majesty, is proved to be entitled to such wreck,—the receiver is forthwith to sell the same; and, after paying all the expenses attending the sale, and deducting his own fees and any expenses incurred by him, and paying to the salvors the amount of salvage determined by the Board of Trade, he pays the residue of the proceeds of the sale into the receipt of her Majesty's Exchequer, in such manner as the Treasury directs (§ 475).

The High Court of Admiralty has jurisdiction to decide upon all

claims whatsoever relating to salvage,—whether the services in respect of which salvage is claimed have been performed upon the high seas, or within the body of a connty, or partly in the one place and partly in the other,—and whether the wreck is found at sea or cast upon the land, or partly in the sea and partly on the land (§ 476). But this does not give the High Court of Admiralty of England any jurisdiction in respect of salvage in Scotland, which it did not previously have or exercise (§ 543).

It is the dnty of the ships of the Royal Navy to render assistance to the merchant ships of this country when in distress; and where salvage services are rendered by any ship belonging to her Majesty, or by the commander or crew thereof, no claim is to be made or allowed for any loss, damage, or risk thereby cansed to that ship, or to the stores, tackle, or furniture thereof,—or for the use of any stores or other articles belonging to her Majesty, supplied in order to effect the salvage services,—or for any other expense or loss snstained by her Majesty by reason of these services (§ 484). No claim whatever on accounnt of any salvage services rendered to any ship or cargo, or to any appurtenances of any ship, by the commander or crew, or part of the crew, of any of her Majesty's ships, can be finally adjndicated upon, unless the consent of the Admiralty has first been obtained, and signified by writing under the hand of the Secretary of the Admiralty; and if the person who has originated proceedings in respect of such a claim, fails to prove this consent to the satisfaction of the court, his snit is to stand dismissed, and he is to pay all the costs of these proceedings (§ 485).

Whenever services, for which salvage is claimed, are rendered to a ship or cargo, or to any appurtenances of a ship, at any place *out of* the United Kingdom and the four seas adjoining, by the commander or crew, or part of the crew, of any of her Majesty's ships,—the property alleged to be salved, if the salvor is jnstified by the circumstances of the case in detaining it at all, mnst be taken to some port where there is a consnlar officer or vice-admiralty court, and, within twenty-four hours after arriving at that port, the salvor and the master, or other person in charge of the property alleged to be salved, must each deliver to the consular officer or vice-admiralty jndge there, a statement, *verified on oath*, specifying, so far as they respectively can, and so far as the particulars required apply,—

1. The place, condition, and circumstances in which the ship, cargo, or property was at the time when the services were rendered for which salvage is claimed.

2. The nature and duration of the services rendered.

To his statement, the salvor adds:—

3. The proportion of the value of the ship, cargo, and property,

and of the freight which he claims for salvage, or the values at which he estimates the ship, freight, cargo, and property respectively, and the several amounts that he claims for salvage, in respect of the same.

4. Any other circumstances he thinks relevant to his claim.

And to his statement, the master or other person in charge of the ship, &c., adds:—

5. A copy of the certificate of registry of the ship, and the indorsements thereon, and stating any change which, to his knowledge or belief, has occurred in the particulars contained in the certificate, and also stating, to the best of his knowledge and belief, the state of the title to the ship for the time being, and of any incumbrances and certificates of mortgage and sale affecting the same, and the names and places of business of the owners and incumbrancers.

6. The name and place of business or residence of the freighter (if any), and the freight to be paid for the voyage she is then on.

7. A general account of the quantity and nature of the cargo at the time the salvage services were rendered.

8. The name and place of business of the owner of the cargo, and of the consignee thereof.

9. The values at which the master estimates the ship, cargo, and property, and the freight respectively; or, if he thinks fit, in lieu of this estimated value of the cargo, a copy of the ship's manifest.

10. The amounts which the master thinks should be paid as salvage for the services rendered.

11. An accurate list of the property saved, in cases where the ship is not saved.

12. An account of the proceeds of the sale of the ship, cargo, and property, in cases where the same, or any of them, are sold at the port where there is a consular officer, or a vice-admiralty court, as aforesaid.

13. The number, capacities, and conditions of the crew of the ship at the time the salvage services were rendered.

14. Any other circumstances he thinks relevant to the matters in question.

15. A statement of his willingness to execute a salvage bond in the form given in the schedule annexed to the act (§ 486).

Within four days after receiving these statements, the consular officer or vice-admiralty judge fixes the amount to be inserted in the bond, at such a sum as he thinks sufficient to answer the demand for the salvage services rendered; but the sum so to be inserted in this salvage bond, must not exceed one-half of the value which, in the estimation of the consular officer or vice-admiralty judge, the ship, freight, and cargo, or the parts thereof, in respect of which

salvage is claimed, may be worth. If either of the foregoing statements is not delivered to the consular officer or judge, he can proceed on the statement from the one party; but he must, in no case, require the cargo to be unladen (§ 487). And the consular officer or judge sends notice of the sum which has been so fixed by him, to the salvor and the master (§ 488).

This bond binds the respective owners of the ship, freight, and cargo, and their respective heirs, executors, and administrators, for the salvage adjudged to be payable in respect of the ship, cargo, and freight respectively (§ 491); and it does not require a stamp (§ 495). And, upon the master executing this bond, with the sum fixed for salvage inserted therein, in presence of the consular officer or judge (who attests the same), and delivering the bond to the salvor, the salvor's right to detain or retain possession of the ship, &c., or any of them, for which salvage is claimed, ceases (§ 488). But, if the salvor does not elect to proceed under the Merchant Shipping Act, he has no power to detain the ship, cargo, or property, but he can proceed otherwise for the enforcement of his salvage claim, as if that act had not been passed; and nothing contained in it abridges or affects the rights of salvors, except in the cases thereby provided for (§ 494).

If the ship, cargo, or property, in respect of which the claim of salvage is made, *is not owned by persons resident in her Majesty's dominions*,—the right of the salvor to detain or retain the property salved does not cease, unless, in addition to the salvage bond, the master procures such security for the due performance of the conditions thereof, as the consular officer or judge considers sufficient for the purpose, and places that security in the possession or custody of that officer or judge,—or, if the salvor so desires, in the possession of the officer or judge jointly with any other person whom the salvor appoints for this purpose (§ 489).

These are the provisions of the act in regard to salvage services performed by any of her Majesty's ships; but when services for which salvage is claimed, are rendered either by the commander or crew, or part of the crew, of any of her Majesty's ships, *or of any other ship*, and the salvor *voluntarily* agrees to abandon his lien upon the ship, cargo, and property alleged to be salved, on the master or other person in charge entering into a written agreement, attested by two witnesses, to abide the decision of the High Court of Admiralty of England, or of any vice-admiralty court in any part of her Majesty's dominions, and thereby giving security to such an amount as may be agreed on by the parties thereto,—this agreement binds the ship, and the cargo, and the freight payable therefor, respectively, and the respective owners of the ship, freight, and

cargo, for the time being, and their respective heirs, &c., for the salvage which may be adjudged to be payable, in respect of the said ship, cargo, and freight respectively, to the extent of the security so given. This bond can be adjudicated upon and enforced in the same manner as the salvage bonds immediately before mentioned; and, upon this agreement being made, the salvor, and the master, or other person in charge, make similar statements, as are to be made by them (§ 486 *ut sup.*), in the case of a salvage bond being given, except that these statements need not be made upon oath; and, as soon as practicable, the salvor transmits the agreement and the statements to the court, in which the former is to be adjudicated (§ 497).

When the aggregate amount of salvage payable in respect of salvage services *rendered in the United Kingdom* has been finally ascertained, and exceeds £200, and when the aggregate amount of salvage payable in respect of salvage services *rendered elsewhere* has been finally ascertained, whatever that amount may be,—then, if any delay or dispute arises about the apportionment thereof, any court having admiralty jurisdiction can cause the same to be apportioned among the persons entitled thereto, as that court thinks just. For this purpose the court can, if it thinks fit, appoint any person to carry this apportionment into effect; and can compel any person in whose hands, or under whose control, the same may be, to distribute the same, or to bring the amount into court, to be dealt with as the court directs (§ 498).

All foreign goods, being wreck, brought or coming into the United kingdom, or the Isle of Man, are subject to the same duties as if these had been imported into the United Kingdom, or the Isle of Man. If any question arises as to the origin of these goods, they are to be deemed to be the produce of such country as the Commissioners of Customs, upon investigation, may determine (§ 499). The Commissioners of Customs and Excise permit all goods, wares, and merchandise saved from a ship stranded or wrecked,—if in its homeward voyage,—to be forwarded to the port of original destination,—and, if on its outward voyage,—to be returned to the port of shipment, security being taken for the due protection of the revenue (§ 500).

If vessels sail as consorts, and under an agreement to render mutual assistance, as in the Greenland trade, each vessel enjoys the benefit of this agreement, and, therefore, should any accident or calamity happen to either, the vessel so situated reaps the benefit of this mutual stipulation, and there is no salvage remuneration due for services rendered by the one to the other (Zephyr, Arrowsmith; 2 Hag., 43). But loose conversations, at the time the services are

rendered, will not be considered as conclusive, either in regard to the services so rendered, or as to the amount of the reward to be given for such services (Salacia, Garland; 2 Hag., 265).

If an agreement is made by a vessel in distress, with the master of another vessel, to render assistance for a sum certain, and that assistance is given, and the vessel and cargo are placed in safety, the court will not entertain a claim from the owner of the vessel so assisting, for salvage, over and above the sum so agreed on (Mulgrave, Garbutt; 2 Hag., 77). But when these salvage services are rendered without any such agreement, although, strictly speaking, the master and crew are the only salvors, yet the owners are entitled to a claim, under the equitable consideration of the court, for the risk to which their vessel, boats, &c., or other property, may have been exposed (San Bernardo; 1 Rob. 178).

The mere bringing into port, a barge found aground on a sand bank, without anchor or crew, but in a place where it was a common usage to leave such barges, is not such a service as entitles the parties doing so, to a salvage remuneration (Upnor, Hadlow; 2 Hag., 3).

Formerly, the English Court of Admiralty had no power of remunerating the mere preservation of life (Aid, Teasdale; 1 Hag., 83); but, by the Merchant Shipping Act, the saving or preserving the life of any person on board a vessel in distress, or wrecked, or stranded, or in danger of being wrecked or stranded, is now rewarded as a salvage service (17 and 18 Vict., c. 104, § 458).

Having, thus, seen what are to be considered salvage services, let us next see who, in law, are the parties held to be salvors, and, as such, entitled to salvage remuneration.

I have already repeatedly said, that the crew of a vessel cannot be considered as salvors, nor as entitled to salvage remuneration for their services and exertions, in regard to their own ship and cargo when in distress; and, although a passenger is not bound to remain on board a vessel in the hour of danger, and, when he has opportunity, may leave her, yet, when he does remain, he is bound to give all the assistance he can, and it is more particularly his duty to do so, when he himself is a naval officer (Branston, Wilson; 2 Hag., 3). But if a person, who has had command of vessels, and who is a passenger in a vessel which is in a situation of danger, and is deserted by the master and part of the crew,—takes,—with consent of the mate and the rest of the crew,—the command of the vessel, and brings her into harbour,—he is entitled to be paid for his services (Newman *v.* Walters; 3 B. P., 612). And, when the crew of another vessel had been received, for their passage home, into a vessel afterwards in distress,—although they may be expected to render

something like the same assistance as her own crew, yet, when they work night and day, while she is so in distress, they are entitled to some reward for these salvage services (Salacia, *ut sup.*)

In like manner, the services of pilots are not, in general, to be confounded with, or exalted into, a claim of salvage. No donbt their occnpation may be, in many instances, attended with danger; bnt, having assumed the character, occupation, and duties of a pilot, they are bound to be in readiness, so as to afford their services, at all times, and in all weathers, and not as salvors (Colnmbus, Nerrol; 2 Hag., 178). They are, therefore, bound to offer their services in all weathers, and their claim for extra compensation for these services, is held to be a matter of strict law;—as, where towing is necessary, pilots are bonnd to perform it, merely having a claim of compensation for any damage done to their boats, or for extra labour (General Palmer, Truscott; 2 Hag., 176). If extraordinary pilot's services are required to a vessel in distress, an additional pilotage,—say double the rate of common pilotage,—is the proper rate of reward for such services (Enterprise, Crosbie; 2 Hag., 178 N.); and, in a case already referred to, where pilots did not, for two days, make a fair trial to get off to a vessel in distress, but, on the third day,—when there was no danger, the weather moderate, and the wind fair for the harbour,—they went off;—and they were found entitled, not to salvage, but to pilotage merely (City of Edinburgh, Fraser; 2 Hag., 333).

In the ordinary case, it is those persons voluntarily lending their assistance, or whose assistance is required by the master, or by the proper civil authorities, who are held the true salvors, and, properly speaking, it is those by whom the ship, cargo, or stores, has actually been saved or recovered, and on whom the duty of restoring these lies, who are strictly the actual salvors (per Sir John Nicholl, in the Thetis; 3 Hag., 14).

Although the salvors are entitled to retain possession of the property salved until they are satisfied for their services, and when the ship has been removed by them into a roadstead, it cannot be removed without their consent (the Nicolai Heinrich; 17 Jur., 329); yet it is a foolish notion, that salvors impair their title to remuneration, by quitting the ship which they have been instrumental in saving (Eleanora Charlotta; 1 Hag., 156); but, where the salvors are in possession, they have a legal interest, which cannot be divested without adjudication in a competent court, and it is not for her Majesty's officers, or any other persons, on the ground of superior authority, to dispossess them without cause (Blendenhall, Barr; 1 Dod., 414). The first occupants as salvors, are entitled to prevent the interference of all others (the Effort; 3 Hag., 165); and

where the salvage is already in the act of being performed, and under means sufficient for the purpose, such interference of a third party is not justifiable (Maria, Kilstrom; Edw., 174). The claim of a second set of salvors will not, therefore, be admitted, unless they can prove, either that their services have been adopted, or that the first possessors were incompetent (Eugene, Bourne; 3 Hag., 156), or that the first would not have been able to effect the purpose without the aid of the others, and that their further assistance was necessary for the preservation of the property (Charlotta, Nesser; 2 Hag., 364). But such prior salvors have no right in themselves, while the master is in command, to interfere with further assistance, and to attempt to exclude any subsequent assistance, and such misconduct diminishes their title to salvage remuneration (Dantzic Packet, Tanner; 3 Hag., 383).

Having thus seen, what are salvage services, the parties who may perform such services, and how they are to be paid, let us now pass to the parties liable to pay salvage; and, in reference to them, the general rule is, that the owners of the property which has received the benefit, and which, but for the exertions of the salvors, would have been lost to them, are alone chargeable with the salvage reward (Abbot, 572). And, therefore, as salvage remuneration is a compensation to the salvors, not merely for the restitution of property made by them to the prior owners, but for the risk and hazard incurred by the salvors, and also for the beneficial service rendered the owners, in rescuing their property from the risk in which it was involved,—so the persons to contribute to the salvage reward, are the persons who would have borne the loss, had there been no rescue, and who, of course, reap the benefit of that rescue; and hence, to form a judgment who would have borne the loss, had there been no rescue, and to whom the rescue was beneficial, we must look to the interest which each party had (Lord Ellenborough, in Cox, *v.* May; 4 M. S., 158).

In the subjects liable to pay salvage, freight is included, if the voyage for which that freight was to be paid had commenced, and the freight was in the course of being earned, at the time the salvage services were performed (Dorothy Foster, Sowden; 6 Rob. 88). It may happen that the whole salvage will fall upon the shipowner and the freight,—as in the case quoted above. In that case, the ship and cargo had been captured and recaptured on her homeward voyage, and was sold by consent of all parties;—the owners and charterers made their respective claims, in the Court of Admiralty, to the ship and goods, and restitution was decreed on payment of salvage;—but, from the sale of the goods, the charterers had paid two sums of £2500 for salvage, and part of the freight had been

paid;—and the proceeds of the residue of the goods fell short of the sum due for the balance of the freight:—and, in an action by the shipowners against the charterers for this balance,—it was held, that the former, in respect of the freight, were liable to the whole salvage, and that the charterers, having paid the salvage contribution out of the proceeds of the goods under a security given by them, with consent of the owners, so far as their liability was concerned, for payment of salvage,—they could set this payment off against the claim for the balance of the freight (Cox *v.* May, *ut sup.*)

The last consideration is, the amount of salvage remuneration to be paid the salvors, and the manner in which that remuneration requires to be apportioned among the salvors, according to the nature and extent of the services rendered. The general principle is, that all shall share in this remuneration, who have rendered salvage services in rescuing the property in danger, and upon which the contribution has been made (Abbot, 582). It is not merely the amount of service,—the work and labour performed,—which has to be considered, in order to determine the amount of this remuneration; but, it has been well said by high authority, "that salvage is not merely a payment for work and labour; other considerations are to be adverted to,—the general interests of navigation, and of the commerce of the country,—to encourage exertion, and to excite to risk and peril in the relief of property in danger. It is true, on the other hand, that the court must guard against exorbitant demands, and undue advantage being taken of distress; but, when salvors act honestly and fairly, they are to be liberally rewarded, without a minute inquiry as to the amount of labour" (per Sir John Nicholl, in the Hector; 3 Hag., 95). And, in reference to the *criteria* by which the amount of remuneration has to be fixed, the same learned judge remarked, that "the amount of remuneration must depend on all the circumstances; it is not a mere question of work and labour,—not a mere calculation of hours, though time is, undoubtedly, an ingredient,—but there are various facts for consideration,—the state of the weather,—the degree of damage and danger, as to the ship and cargo,—the risk and perils of the salvors,—the time employed,—the value of the property,—and, when these are considered, there is still another principle,—to encourage enterprise,—to reward exertion,—and to be liberal in all that is due to the general interests of commerce, and the general benefit of owners and underwriters, even though the award may fall upon an individual owner with some severity" (per Sir John Nicholl, in the Industry; 3 Hag., 204).

The same learned authority has, in the following words, ably stated the requisites or ingredients necessary to constitute an effective salvage service. "The ingredients," says Sir John Nicholl,

"in a salvage service are, first, enterprise in the salvors, in going out in tempestuous weather, to assist a vessel in distress,—risking their own lives to save their fellow-creatures, and to rescue the property of their fellow-subjects; secondly, the degree of danger and distress from which the property is rescued, when it was in imminent peril and almost certainly lost, if not at the time rescued and preserved; thirdly, the degree of labour and skill which the salvors incur and display, and the time occupied; lastly, the value. Where all these circumstances concur, a large and liberal reward ought to be given; but where none, or scarcely any, take place, the compensation can hardly be denominated a salvage compensation,—it is little more than a remuneration for work and labour" (Clifton; 3 Hag., 121).

As to the amount of the remuneration which is to be awarded the salvors, the English Court of Admiralty, in cases of civil salvage, does not recognise the rule of proportion, but awards an equitable remuneration, according to the extent of the services rendered, and of the labour performed, and the value of the property saved,—a larger proportion being awarded when the labour has been great, and the property of small amount; a less proportion when the property saved is of a greater value; and, when the value of the property saved is of much extent, a moderate proportion,—a small proportion being considered a sufficient equitable remuneration when the property is very large (Waterloo; 2 Dod., 442. Salacia; 2 Hag., 264). In cases of derelict (or anything forsaken and abandoned at sea), the same court does not hold itself warranted in awarding a moiety, or one-half, without regard to the peculiar circumstances of each case (Aquila, Lumsden; 1 Rob., 37). The salvage remuneration is in the discretion of the court, on a consideration of the whole circumstances connected with the salvage, and is apportioned according to the extent of that salvage service. In a case of derelict of great merit, even where the value is small, the court has given one-half, and allowed the expenses out of the other half (Francis Mary, Kendal; 2 Hag., 89); and, in another case, where a vessel postponed her homeward voyage in search of freight, and went out of port to a wreck, five hundred miles distant, and there, with great risk and exertion for several days, saved valuable property, and was afterwards compelled, by weather, to put back to the same port,—there sold the property, and transmitted the proceeds to this country to abide salvage,—a moiety was awarded, and apportioned among the owners, the master, mate, and crew (Martha, Viner; 3 Hag., 434). In such cases, the award, however, is discretionary,—seldom more than one-half, or less than one-third, being given; and in the case of an ordinary salvage, the court also exer-

cises a discretionary power, awarding remuneration on a view of all the circumstances of each particular case.

As already mentioned, the rule is, to award a larger proportion when the property saved is of small value, and a less proportion where it is of large amount. For instance, in one case, where the value of the cargo saved was £38,000,—for the salvage of the *cargo* the court awarded £1000 for contingent losses, £1500 for salvage reward, and £500 for the master's particular expenses (Salacia, *ut sup.*); and, in another case, where the master of a whaler and a boat's crew of five men went, at the imminent peril of their lives, to assist a vessel at sea, with the water making a breach over her, when they assisted in rigging a jury-mast, and afterwards towed her, during six days, into Plymouth,—out £7000 of value, £1200 were awarded in the following proportions:—£700 to the owners for demurrage, repairs, risks, and all other expenses, £200 to the master, £20 to each boatman, and the rest of the crew to share the remainder, according to their interest in the voyage (Jane, Hudson; 2 Hag., 338).

I have already remarked, that salvage services rendered by and to steamers, are more liberally rewarded than salvage services rendered otherwise, in consequence of the great power these vessels possess, and the complete control which they are under.

What I have now said applies to salvage services rendered in any place, and to the salvage remuneration which has been awarded for such services in the English Court of Admiralty. The principles upon which salvage services have been recognised, and upon which a salvage remuneration is to be awarded, are so distinctly and satisfactorily explained in the authoritative quotations above given, that it is unnecessary to add one word, as I am satisfied that, if you carefully attend to the plain common-sense, and the sound law given in these quotations, you will learn quite enough to guide you in any salvage dispute, in which you may unfortunately happen to be engaged, without involving your owners in law expenses.—I am, &c.

LETTER XII.

Driven into an intermediate port—Cargo damaged—Vessel requiring repairs—In such case, master agent for all parties—Survey—Copies of survey and protest to be sent to the owners and shippers—Sale of cargo—When master can sell and when not—Master can only sell, if cargo perishable, and in particular circumstances—Example of—Opinion of Lord Tenterden—Authority of Vice-Admiralty Court abroad to sell, no justification to master—What repairs must be given at intermediate port—must be no unnecessary delay—Must pursue shortest course to port of destination—What repairs, general average—What not—Must obtain proper accounts and receipts—And forward these to owners—If repairs exceed twenty shillings for every ton, must satisfy customs—Refitting and transhipping—General rule as to repairing within reasonable time, or transhipping—When entitled to full freight—Or to nothing—Whether master bound to forward—Rule of law as to—Opinion of Lord Denman on transhipment—Underwriter liable—If goods cannot be transhipped, must await instructions of owners—Sale of ship by master—In extreme necessity—Instances of sale not sustained—Instances where sale sustained—Sale must be from absolute necessity—Master must forward surveys and protests—Vice-Admiralty Court abroad has no power to order sale—Vessel should be broken up before sale—Remarks of Sergeant Shee.

Gentlemen,—I have been chiefly treating of shipwreck on our own shores, and the line of conduct which, in such circumstances, you should follow, and the duties you have to perform. I will now proceed to another disaster, and assume, that you are driven by stress of weather, and sea damage, into an intermediate port,—that your cargo is damaged, and that your vessel requires repair, in order to enable her to proceed on her voyage.

In such circumstances, it is essential for you always to consider yourself as agent for all parties, and to act as you would have done for yourself, if uninsured, or as you can honestly consider the parties themselves would have done, if they had been present. If the damage be of any extent, it will be your first duty to have a survey of the ship and cargo made by competent persons. For that purpose, it may be necessary to unload and warehouse the cargo, and the expenses of so doing are matter of general average. You ought to forward copies of the surveys and your protest to your owners and the shippers; and, if you can hear from them within a reasonable time, you ought to await their instructions. Perhaps, the surveyors may report, that the cargo, or at least part of it, should be sold; but this recommendation you will adopt or not, according as, acting as an honest man, you consider it proper and necessary, and the best that can be done in the circumstances, for the benefit of all concerned. You should always bear in mind, that you are merely a common carrier, entrusted with the conveyance of goods,—that your paramount duty is, to convey these goods to their place of destina-

tion,—and that, unless under very peculiar circumstances, you have no power to dispose of them. If the cargo be not of a perishable nature, and will not suffer by the delay, it ought to be warehoused until the vessel be repaired, and fit to continue her voyage, and on no account should it be sold. If the cargo, or part of it, consist of manufactured goods, such as linen, cotton, or woollen, the bales must be opened and the goods dried, and such other precautions adopted as may be necessary for preventing the damage from spreading; but, if they have not been damaged, these goods can be warehoused as well as any other. If the cargo be of a perishable nature, and has been so much damaged by the sea water, as to render it unfit for carrying forward to its place of destination, then, in such a case of absolute necessity, a sale may be the proper and prudent course; as, for example,—hides were shipped at Valparaiso for Bourdeaux, and arrived at Rio de Janeiro, on their way to Bourdeaux, in a state of incipient putridity, occasioned by a leak in the vessel, and were sold there for a fourth of their value, because, by the process of putrefaction, they would have been destroyed before they had arrived at the port of Bourdeaux. In such a case of absolute necessity, there could be no doubt of the propriety of the sale, and of the power of the master to sell (Ronx *v.* Salvador, 3 Bing. N. C., 266). But if the cargo be corn, which has been wetted by salt water, you are not to sell it in consequence, but it must be kiln-dried, so as to render it fit for being re-shipped. And, if the vessel has become a wreck, so that it cannot be repaired, then the contract with the shippers for the conveyance of the goods is at end, and you have no power to sell any part of the cargo. For instance, where a vessel, in the course of a voyage to India, was wrecked off the Cape of Good Hope, and some indigo, part of the cargo, was sold there by public auction, by the authority of the master, acting honestly, according to the best of his judgment, for the benefit of all concerned, and no fraud or improper motive was imputed to him; the indigo was described as being wet, but otherwise in good order, and the chests were not opened before the sale; the indigo was sent to this country, and the original owners were found entitled to recover its value (Freeman *v.* East India Co., 5 B. A., 617). And, in another case, the ship had received so much damage from a collision at sea, that she was compelled to put into a port of distress, where the cargo (opium) was found to be partially damaged by salt water; the master, acting *bona fide*, and to the best of his judgment, selected the damaged chests of opium, and sold them by auction, and forwarded the remainder to the port of destination; it appeared that the master might have had the opium dried and repacked while the vessel was refitting, and forwarded it, though deteriorated in value, with the other opium.

In an action against the shipowner for the value of the opium damaged and sold, it was held, that it was the duty of the master, under such circumstances, to carry the cargo to its place of destination, as the goods could have been delivered in a marketable, though in a damaged state (Trouson *v.* Dent, 8 E. F. Moo., 419).

In the next letter, I will consider your power to sell part of the cargo, for the purpose of paying the expense of the repairs, and the other necessary expenses which may have been incurred at the port to which you have been compelled to resort; and, in this letter, I will afterwards consider your powers of forwarding the cargo by another vessel, to its port of destination. But, here, I would impress upon you, that, in general, you have no power to sell the cargo; your primary obligation is to forward the cargo; and, if that has become impracticable, you must either return it to the port of lading, or place it in safe keeping at the intermediate port, to await the instructions of the shipper. It must be a very perishable cargo, and in very peculiar circumstances, indeed, which will justify you in selling it; and therefore a sale must be the last thing to which you should resort, and that sale can only be justified by such a dire necessity as supersedes all human laws (Abbot, 368.) If a sale is made without any such necessity, you and your owners will be answerable for the value of the goods; and it will be no defence, that the sale was made under the authority of a vice-admiralty court, in a British colony,—that court having no authority to order such sale; and, besides, the purchaser who has bought at a sale made under such circumstances, will be answerable to the original owner, for the value of the goods. The following case will serve as a striking illustration of all these consequences. The master of a vessel, which had been injured by the perils of the sea, put into the Mauritius, and there abandoned the ship and the cargo, which were afterwards sold under an order of the vice-admiralty court there, and the proceeds paid into that court. The cargo was neither damaged nor perishable, nor was there any pressing necessity for the sale of it; therefore, the owners of the cargo brought an action against the owners of the vessel for wrongfully selling the cargo, in place of carrying it to London, in terms of the contract of affreightment; and they obtained a sentence against the owners, for the value of the ship and freight, which only amounted to one-fifth the value of the cargo. They also sent out a power of attorney to an agent in the Mauritius, for the purpose of procuring from the vice-admiralty court there, the proceeds of the sale, which had been previously remitted to the High Court of Admiralty in England. The owners of the cargo then raised an action against the purchasers of the goods; and, in that action, it was held, that the master had no authority to sell the

cargo, although, in doing so, he was acting from an honest intention, and under the order of the vice-admiralty court;—that the recovery against the owners of the ship was no answer to the demand against the purchasers of the cargo;—and the proceeds of the sale at the Mauritius not having been paid when demanded, the owners of the cargo were in the same situation, as if no such demand had been made; and, therefore, they were entitled to recover the value of the goods from the purchasers (Morris *v.* Robinson, 3 B. C., 196.)

In treating of this subject, the late learned Chief Justice of the Court of King's Bench, in his excellent work on shipping, has the following remarks, which it would be well for you seriously to consider and keep in mind, should you ever be in a situation where you think it necessary, or where you may be advised, to dispose of your cargo, or part of it. He says,—"An unexpected interdiction of commerce, or a sudden war, may defeat the adventure, and oblige the ship to stop in her course; but neither of these events doth, of itself alone, make it necessary to sell the cargo, at the place to which it may be proper for the ship to resort. In these and many other cases, the master may be discharged of his obligation to deliver the cargo at the place of destination; but it does not, therefore, follow that he is authorised to sell it, or ought to do so. What, then, is he to do? In general, it may be said,—he is to do that which a wise and prudent man will think most conducive to the benefit of all concerned" (Abbot, 367.)

It is a very common notion, but a very foolish one, that, when a master applies to a vice-admiralty court abroad, to have a survey made of the cargo, and the surveyors recommend that the cargo should be sold, upon which the vice-admiralty court grants warrant for selling it accordingly,—this warrant is a sufficient authority to the master to sell, and protects him from all the after consequences of doing so. Nothing can be more absurd. The laws of this country recognise no court abroad, that has an authority, on your own application, and at your own instance, to do what, under your authority of master, you yourself would not be justified in doing. A vice-admiralty court has no authority to order a sale; and neither a report by surveyors, appointed by such a court, nor a sentence of condemnation pronounced upon that report, is conclusive evidence of the absolute necessity which exists for the sale, and which alone can justify a sale by you as master. Any such proceedings may be useful for the information of the owners, or of those who, under certain circumstances, have the power of selling; but they, certainly, confer upon you no authority, and afford you no justification for the exercise of an authority which must arise from the existence of absolute necessity, and which can be justified by that absolute necessity

alone. Your primary and paramount duty is, to convey the cargo to its place of destination; for this purpose, you are entrusted with it, and this purpose you are bound to accomplish by every reasonable and practicable method (Abbot, 365); and it is only in the case of an *absolute necessity*,—a necessity not merely legal, nor physical, but a moral necessity,—the test of which is, whether the circumstances are such, that a person of prudent and sound mind could have any doubt as to the course he ought to pursue (Chief-Justice Tindal in Soames *v.* Sugrue, 4 C. P., 276),—that you can take upon you to dispose of the cargo.

The extent of repairs which a vessel may require at an intermediate port, or at a port to which she is compelled to go for the sake of having repairs performed, and which, in consequence of a disaster at sea, have become necessary, in order to enable her to continue her voyage, must, of course, depend upon the damage she has received; but, the general rule is, that no repairs or necessaries must be done or supplied more than are absolutely necessary,—that these must be done as expeditiously as possible,—that you must wait no longer at that port than this necessity requires,—and that you must sail again without delay (Abbot, 304). This necessarily implies, that it is only the repairs rendered necessary by the perils of the sea, and the storms and dangers the vessel has encountered, which are to be performed at that intermediate port of necessity; but, if these repairs have been rendered necessary, in consequence of the natural decay of the vessel, from age, or of her not having been properly found or provided at the outset, and not having been sufficiently tight, stanch, and strong for the voyage,—it will then be a difficult and important question, whether the insurances upon the ship and cargo are not thereby vitiated; and, at all events, the expenses incurred at that port must, in such a case, fall upon you and your owners (2 Arn., 757).

Although the time thus spent in obtaining these necessary repairs, is not held such a delay as will amount to a deviation, yet, if there be any unnecessary delay in getting these repairs done, this will amount to a new deviation; and after the repairs have been executed, it is not necessary to return to the point of the original voyage, from which you deviated for the purpose of repair, but you must pursue the shortest and most direct course to the port of destination, in the most expeditious manner (1 Arn., 390; 1 Mar., 202).

If the repairs were rendered necessary for the general preservation and benefit of all, and from a cause which would found a general average contribution, and are merely such as were necessary to enable the vessel to proceed on her voyage, and were not afterwards to be of any lasting benefit to her,—although it is not easy to con-

ceive a repair which would not be productive of *some* benefit to a vessel,—the expense of these repairs, deducting any benefit that may result to the vessel, including the expense of unloading the cargo to make them, are matters of general average (Plummer *v.* Wildman; 3 M. S., 482). Yet, where the repairs have been occasioned by the ordinary perils of the sea, as by tempestuous and adverse winds, neither the expenses of the repairs themselves, nor the wages and provisions of the crew while detained in that port, are general average (Power *v.* Whitmore; 4 M. S., 141). These latter must fall upon the owners, under their obligation to keep the vessel tight, stanch, and strong, during the voyage. Of course, if the repairs are absolutely necessary, you do not require to trouble yourself as to whether the expense of these repairs is to form general average or not, or whether that expense is to be borne by the shippers and owners, or is to fall wholly upon the latter. But this you need to attend to,—not to go into a port and repair, unless absolutely necessary,—to have nothing done there but what is absolutely necessary,—and to allow of no delay in getting that done. And, besides, you must take care to obtain proper accounts and receipts for all you may expend. These, with the surveys which have been made, and the protest that you, as a matter of course, have taken on your first coming into port, you will take care, when you are ready to proceed, to forward to your owners, so as, if these expenses are the proper subjects for a general average, the different proportions may be fixed and ready for settlement, either at the port of lading, or at the final port of discharge; or if the expenses are only to be a particular average, your owners may recover from the underwriters.

In what has been said, I have assumed that your own vessel is repairable, and that, at the port to which you have gone from necessity, there are the capabilities for performing the requisite repairs. In such case, the general rule is,—that when the vessel becomes accidentally disabled in the course of the voyage, without your fault, you have the option of two things,—either to refit, if that can be done within convenient time,—or to hire another ship to carry the goods to the port of delivery; and, if the shipper disagree to this, and will not let you do so, then you will be entitled to the whole freight of the *full* voyage (Lord Mansfield in Luke *v.* Lyde; 2 Burr., 889). And, if the ship be disabled from completing her voyage, the shipowner may still entitle himself to the whole freight, by forwarding the goods by some other means to the place of destination; but he has no right to any freight, unless the forwarding of them be dispensed with, or unless there be some new bargain upon this subject. If the shipmaster will not forward them, the freighter is

entitled to them, without paying anything. One party, therefore, if he forward them, or be prevented or discharged from doing so, is entitled to his whole freight; and the other, if there be a refusal to forward them, is entitled to have them without paying any freight at all (Lord Ellenborough in Hunter *v.* Prinsep; 10 East., 378).

Here, then, if your own vessel can be repaired in a reasonable and convenient time, and if these repairs can be executed at the port you have gone to, you can retain the goods until your vessel be repaired,—taking, of course, all necessary care of warehousing, and otherwise attending to them in the mean time; but, if the freighter take the goods off your hands at that port, and do not require you to carry them on to the port of original destination, then, he is liable for the whole freight of the full voyage. On the other hand, if the freighter do not do this, so as to dispense with your performing and completing your original contract, and if you do not forward them, the freighter will be entitled to them, without paying anything.

The great question is, however, whether, when your own vessel is wrecked, or disabled from carrying on the goods to the place of their destination, by some event which you have not occasioned, and over which you have no control, you are *bound* to forward the goods in another vessel; or, having contracted to carry them in your own vessel, you are freed from the further prosecution of the voyage, by the accident which has happened, and which prevents you from accomplishing it in the literal terms of your undertaking. It would be uninstructive to enter into any examination of the different foreign laws, and opinions of foreign lawyers, on this question, because the rule adopted in this country, as stated by Lord Tenterden, and decided by the court, is, that, "if by reason of the damage done to the ship, or through want of necessary materials, she cannot be repaired at all, or not without very great loss of time, the master is at *liberty* to procure another vessel to transport the cargo to the place of destination" (Abbot, 365),—if he think fit; and if the goods arrive at the place of destination, by such other conveyance, he is entitled, on the freighter obtaining the goods, to the whole freight originally contracted for, although, by the second conveyance, the goods may have been carried for less than the original freight (Shipton *v.* Thornton; 9 A. E., 314).

In delivering the opinion of the court, in the case now referred to, Lord Denman remarked,—"It may, therefore, safely be taken to be either the duty or the right of the owner to tranship in the case above supposed: if it be the former, it must be so in virtue of his original contract, and it should seem to result from a performance by him of that contract, that he will be entitled to the full consideration for which it was entered into, without respect to the par-

ticular circumstances attending its fulfilment: on the other hand,—if it be the latter, a right to the full freight is implied,—the master is at liberty to tranship; but for what purpose, except for that of earning his full freight at the rate agreed on? In the case supposed, we may introduce another circumstance:—let the owner of the goods arrive, and insist, as he undoubtedly may, that the goods shall not proceed, but be delivered to him at the intermediate port; there is no question but that the whole freight, at the original rate, must be paid; and that, because the freighter prevents the master, who is able and willing, and has the right to insist on it, from fulfilling the contract on his part; and because, sending to their destination in another vessel is deemed a fulfilment of the contract. If, therefore, the owner of the goods be not present, and personally exercise no option, still the shipowner, in forwarding the goods, must have the same rights, and, in doing so, must be taken to exercise them with the same object in view." His lordship further remarked:—"It may well be that the master's right to tranship may be limited to these cases, in which the voyage may be completed on its original terms as to freight, so as to occasion no farther charge to the freighters; and that, where the freight cannot be procured at that rate, another, but a familiar principle will be introduced,—that of agency for the merchant. For it never must be forgotten, that the master acts in a double capacity; he is agent of the owners, as to the ship and freight; and agent of the merchant, as to the goods. These interests may sometimes conflict with each other, and from that circumstance may have arisen the difficulty of defining the master's duty under all circumstances, in any but very general terms. The case now put supposes an inability to complete the contract, on its original terms, in another bottom, and therefore the owner's *right* to tranship is at an end; but still, all circumstances considered, it may be greatly for the benefit of the freighter, that the goods should be forwarded to their destination, even at an increased rate of freight; and, if so, it will be the duty of the master to do so. *In such a case*, the owner will be bound by the act of his agent, and, of course, be liable for the increased freight. The rule will be the same, whether the transhipment be made by the shipowner or the master; and, applying it, circumstances make it necessary, on the one hand, to repose a large discretion in the master or owner, while the same circumstances require, that the exercise of that large discretion should be very narrowly watched."

To these observations, coming from so high an authority, and so full of instruction, it would be presumption in me to add anything; and I will only observe, that where the goods have been transhipped into another vessel in consequence of the loss of the original

vessel, the underwriter is still liable to the risk on the goods, and for a loss, should one occur, in the substituted ship (Plantamour *v.* Staples, 1 T. R., 611).

But suppose it be impossible to tranship the goods,—to engage another vessel at the port of necessity, in which to convey the goods to their place of destination,—what are you to do in this case? Here the original rule must come to your aid, and must be acted on by you according to the best of your judgment—viz., to do that which a wise and prudent man would think most conducive to the benefit of all concerned. Should the cargo not be perishable, the proper course evidently would be to place it in a warehouse, or deposit it in some other place of safe custody, to await the instructions of the owners of it, whom, I need hardly add, you must necessarily advise of your situation, and of the course which you have adopted, and what you must pursue. Whatever may be the after question between your owners and the freighters, you cannot be wrong in placing the goods in the power and at the disposal of their owners, when, in the circumstances above noticed, you are unable to fulfil your engagement to carry these goods on to their place of destination. In a previous part of this letter, I have had occasion to remark on the power you have of selling the goods,—that a sale should be the last thing to which you ought to resort, and that it is only a case of extreme and absolute necessity which can justify you in doing so. I am not here speaking of the case, where, after having in vain tried all other expedients of raising money in the intermediate port to pay the necessary expenses, you have of necessity to resort to a sale of part of the cargo,—that will fall under the next letter. But I, here, allude to a sale of the cargo made by you, apparently with an honest intention, and for the benefit of all.

I now proceed to the sale of the ship itself by the master, and to consider under what circumstances of extreme necessity, the master has a right to sell her. But, here, I do not refer to those cases in which the master is compelled to sell the vessel in a foreign port, in order to raise money for paying the necessary expenses there, which properly belong to the following letter.

It is only in cases of *extreme necessity* that the master has any power to sell the vessel; but "what circumstances of distress or damage will constitute such a case of urgent necessity as may enable a master to convey to a purchaser an indefeasible title to his ship, it is more difficult to determine" (Abbot, 19); although, in general, if the master is in a place where the repairs cannot be done, or where he has no money to pay for them, and no means of raising it, then he is justified in selling,—it is a case of necessity (Tindal, C. T. in Soames, *ut sup.*) And it has been held that, by

the law maritime as well as by the British law, the sale of a ship by the master, though honestly done, can be justified only by urgent necessity; and that where this urgent necessity does not exist, the sale is invalid, and the ship must be restored to the original owner (the Segredo, otherwise the Eliza Cornish, 17 Jur., 738). But this necessity, which will warrant the master in selling his ship, will be best seen from a detail of some cases in which such a sale was not sustained, and in which it was.

Thus, in one case, the vessel had been damaged upon the rocks in Sligo Bay, and the master caused her to be surveyed by persons whom he described, but who did not appear to have filled any public station, and who reported that it would require £1500 to repair her, being a sum exceeding her value, and, therefore, that it would be for the interest of all concerned to have her sold. She was accordingly sold for £350, and, by the master's desire, the purchaser paid part of the price to the owner's agents at Sligo, and carried the remainder to account between himself and the master. Soon after the sale, the purchaser offered the master a fourth of the vessel at the same price, if he would consent to navigate her again, to which he agreed; and the vessel, after being repaired at an expense of £800, sailed to Riga, and was taken on her return thence to London, and recaptured; the agents of the original owners declared, that they had done everything they could to prevent the sale, and had been ready to make any advances that might be found necessary. A claim was made to the vessel, on behalf of the original owners, in the Prize Court of Admiralty, and to them the ship was ordered to be restored, without prejudice to any rights which the proper court might think the purchaser had acquired by the purchase (Fanny and Elmira, Edw., 117).

In another case, the vessel had been sent on a voyage to Jamaica, and, immediately after discharging her cargo, she encountered a hurricane, and was driven on the shore of the island. Under these circumstances, the master applied to the consignee of the cargo for advice, and, under his advice, he made the usual protest as to the state of the vessel, and applied to the deputy naval officer of the island for a survey, who accordingly issued his warrant to four masters of ships to examine the vessel, and make a return, upon oath, of her state and condition. They reported that they had been on board, and found the vessel settled in a sand-bank four feet, with a bank of sand between her and the sea of twice her length, and not more than two feet water on the sand-bank; and were, therefore, unanimously of opinion, from the great expense that would be incurred in attempting to get her afloat, and the little chance of succeeding, that it would be most for the advantage of

the underwriters, and all others concerned, to sell the ship as she then lay, with all her materials. The consignee advertised the vessel for sale by public roup as a *wreck*, he himself acting as auctioneer, and charging his commission; and the vessel was sold to one Dunn for about £864 sterling, although she had cost £3700 before she left England, and one of the surveyors attending and bidding at the sale. Dunn sold the vessel to a brother of one of the subsequent owners, and he, upon his oath of ownership and surrender of her register, obtained a new register at Jamaica, and then transferred her there to three other persons,—one of them one of the four masters by whom she had been surveyed. The vessel was got off the sand with considerable difficulty, but very little injured, and, after a slight repair, returned to England with a cargo; and the original owners having brought an action to try the validity of the sale, it was held that there was no such necessity as called upon the captain, acting for the benefit of the owners, to sell the ship (Hayman *v.* Monlton, 5 Esp., 65).

These were questions between the original owners and the purchasers from the master, as to the property of the vessel, and which fully support the principle, that it is only in a case of absolute necessity the master has power to sell. Another class of cases has arisen between the owners and the underwriters,—the former claiming for a total loss on a sale by the master, and the principle of decision being, that the loss, partial only, cannot, by a sale by the master, be converted into a total loss.

Thus, a vessel arrived at Buenos Ayres from Monte Video on 6th October, and anchored in the roads on the following day; but, on the 11th, it was discovered she leaked very fast, and, after discharging the cargo, the vessel, after ineffectual attempts to remove her, sunk on the 12th, lying under water at high tide, but partly above it at low water; on the 18th, she was sold by the advice of some masters of vessels, because the expense of raising her would probably exceed her value; but, shortly after the sale, the water in the river Plate having considerably subsided, the purchaser succeeded in raising the hulk, and expended in repairing her about £1350, which put her in a condition for being used in coasting; although not being coppered, she could not have brought to England a cargo of hides as had been contracted for, but might have been taken in ballast, or with some sort of cargo. The owner brought an action against the underwriters for a total loss:—but it was held that the ship, not being bodily and specifically lost, it could not be a total loss; and, while the ship continued in existence, nothing could make the sale a total loss, unless the sale had been made according to the best and soundest judgment which could

be formed under the circumstances which then existed (Doyle *v.* Dallas, 1 M. R., 48).

In another case, a vessel, on her voyage from Liverpool to Narva, was driven on the Thistle Rock, near Gottenburgh, which so penetrated her bottom, that the crew were obliged to leave for the preservation of their lives; after some ineffectual attempts to float the vessel off the rock, and after obtaining the opinion of several persons, that it was impossible to get her off, and that the best course was to sell her as she lay, the master sold the vessel for £18; the purchaser, in five days, succeeded in getting her off the rock, and, after she had undergone repairs, she cost the purchaser in the whole, including a sum for stores, £750, while her then value was stated to be £1200. The owner brought an action against the underwriter, as for a total loss:—but the court held that, "if the situation of the ship be such, that by no means within the master's reach, it can be treated so as to retain the character of a ship, then it is a total loss; if the master, by means within his reach, can make an experiment to save it, with the fair hope of restoring it to the character of a ship, he cannot, by selling it, turn it into a total loss;" and, therefore, it was held, that the owner could not recover as for a total loss (Gardner *v.* Salvador, 1 M. R., 118).

The principal cases, in which a sale by the master has been sustained, have occurred between the owners and underwriters, in which the propriety of the sale was discussed, as incidental to the question, whether or not a total loss had occurred.

Thus, in one case, the vessel sailed in a seaworthy state from Calcutta on her voyage home, when, in addition to some damage in the Hoogley, she encountered two storms at sea, by which she was so shattered as to render it necessary for her to put back to Calcutta; on arrival, the master gave notice of abandonment to the agents for Lloyd's, resident there, and requested the surveyor to be present at the surveys of the vessel; the agents had no authority to accept the abandonment, but their surveyor attended the surveys, when the vessel was found to be so seriously damaged, that the expense of repairing her would be nearly £5000; the agents refused to undertake the repairs; and the master, having in vain attempted to borrow money for that purpose, on the hypothecation of the vessel, sold her by public advertisement for £1200, as the best course for all parties; and on his return to London, the owners expressed no disapprobation of his conduct:—the owners raised an action against the underwriters for a total loss, and it being found that the captain had a justifiable cause of selling the ship, they recovered accordingly (Bonham *v.* Read, 3 B. B., 147).

In another case, the vessel got on the rocks in the St Lawrence;

and, on survey, it was found that the expense of repairs would exceed her value when repaired; the master sold her as a wreck, and the purchaser got her off; but on her voyage to England she was lost:—the owners raised an action against the underwriters as for a total loss, and they recovered,—the court holding that if, by any of the perils insured against, the ship become a wreck, the master may sell, and the owners can recover for a total loss, without giving notice of abandonment (Cambridge *v.* Anderton, 2 B. C., 691).

In another case, the vessel was driven on shore in a violent storm, and was imbedded in the sand, and so much damaged that she could not be got off unless at a ruinous expense; the master sold her:—and the court holding, that the sale was fairly made and justifiable, found the owners entitled to recover as for a total loss, without notice of abandonment (Mount *v.* Harrison, 4 Bing., 388).

Farther, a vessel was forced, by storms and perils of the sea, into the Isle of France to repair, the expense of which was estimated at £4000; but no assurance could be got that this would cover the expense; another carpenter estimated the cost as far exceeding her value, £8000 or £9000; and, after all, it seemed doubtful whether the repairs could be properly done there;—the captain abandoned and sold the vessel, for the benefit of all concerned,—and Chief Justice Tindal held, that a master has no power to sell, "except from necessity, considered as an impulse, acting merely to excuse his departure from the original duty cast upon him of navigating and bringing back the vessel;—if he has no means of getting the repairs done in the place where the injury occurs, or if, being in a place where they might be done, he has no money in his possession, and is not able to raise any, then he is justified in selling, as the best thing that can be done. In the present case, it appeared that the vessel was in a place where the repairs could be done, and where money could be obtained, although at an extravagant expense; still the question is, whether the expenditure was so great that no prudent man, in the exercise of a vigorous and sound judgment, would hesitate as to the propriety of selling;—if the owner himself had been on the spot, uninsured, and would, in the exercise of a sound discretion, have repaired the vessel; or if an agent of the underwriters had been there, and he, exercising such discretion, would have repaired, then this captain ought to have done so; but, if they would not have done so, then, I think this captain was not compelled to repair, and the sale, in such case, will have taken place under a justifiable necessity" (Soames *v.* Sugrue, 4 C. P., 276).

And, in another case,—the vessel left the wharf at Savannah, to complete her cargo at a place about six miles from it, and, in her

way, the vessel grounded upon some wrecks in the river, by which she was a good deal strained, but floated, and proceeded and completed her cargo, and sailed for England; next day, she encountered some heavy gales, and was found to be leaky, and for two days the pumps were kept going, without any diminution of the leak, when the crew refused to work the pumps any longer;—she then bore back to Savannah, where she arrived, after encountering more rough weather; and, on an examination of her by two of the port-wardens, she was ordered to be discharged: surveys were subsequently made by the port-wardens and several ship-carpenters, when she was declared unfit for service, and directed to be sold for the benefit of all concerned; and she was accordingly stripped, and sold by auction for 1200 dollars, and broken up by the purchaser; and the owners were found entitled to recover from the underwriters (Thomson *v.* Colvin, 1 L. W., 140).

All these cases will show you, that it is only from absolute and urgent necessity you have the power of selling the vessel. Either the vessel must be a wreck and incapable of repair, or she must be in a place where the repairs cannot be had; or, the expense of repairs must exceed her value when repaired; or, after trying all possible means of raising money to pay for repairs, you can do so in no way, and, unless she be to lie and rot, you, as a last resource, must sell her. In such a case, you ought, before selling, to obtain faithful and accurate surveys of the actual state of the vessel; you should take care to preserve evidence of all your procedure and applications for money, and of the steps you adopted in bringing the vessel to sale; and these, with your protest, you must transmit to your owners. It is quite unnecessary to make an application to a vice-admiralty court abroad, to have a survey of the vessel under its authority, and sentence of condemnation and sale as unfit for service. Such court has no authority, upon the petition of the master, to decree the sale of the ship, reported, upon survey, to be unseaworthy and irrepairable, and that sentence of condemnation will have no force in this country, without the facts, upon which it bears to have proceeded, if disputed, being again satisfactorily proved. You will bear in mind it is enacted, by § 53 of the Merchant Shipping Act, that, if a registered ship is totally or constructively lost, burnt, or broken up, the master of that ship, except where the certificate of registry is lost or destroyed, must immediately, if this event occurs in port, but if elsewhere, within ten days after his arrival in port, deliver her certificate of registry to the registrar; or, if there is no registrar, to the British consular officer at that port, and the registrar, if he is not himself the registrar of her port of registry, or the consular officer, forthwith forward the certificate of registry so deli-

vered to him, to the registrar of the ship's port of registry; and a master making default in obeying, without reasonable cause, this provision incurs, for each offence, a penalty not exceeding £100 (17 & 18 Vict., c. 104, § 53).

In a case of necessity which will warrant a sale, the prudent course undoubtedly is, before selling, to break up the vessel, so as she can no longer retain the character of a ship, and she must be sold, utterly and truly, as a wreck, so as to avoid all disputes on the part of your owners, either with underwriters or purchasers, of which I have already given you several examples. And on so important a subject, I cannot do better than close this letter with the remarks of the learned editor of Lord Tenterden's work on shipping:—

"What, then, is the meaning of the rule, so frequently inculcated, that the master, in a case of misfortune to his ship, must do his best for the benefit of all concerned? A ship driven into port by sea damage, in itself but trifling, is discovered, on survey, to be in a state of general and perilous decay. The master is satisfied of her inability to complete her voyage, without extensive repairs, and that the cost of them must be such as to create a grave doubt if an immediate sale would not be more for the interest of her owners. In resolving that doubt, if he means fairly, and reasons rightly, his knowledge that the ship is insured will not influence his judgment. Fraudulent statements, or suppressions in protests and surveys, followed by a hasty sale, or extravagant repairs, may seriously affect the interests, but cannot extend the legal liabilities, of the underwriters. His duty to them is no other than the duty of an honest servant of an honest employer, to them with whom that employer has contracted. Whether he proceeds to a sale, or gives orders for repairs, he should carefully ascertain the amount of damage resulting from recent perils of the sea, and of damage attributable to other and older causes, preserving, for the satisfaction of all whose interests may be affected by his acts, the evidence which will enable them also to distinguish the one from the other, and thereby adjust their respective losses."—(Note to Abbot, 18.)

I shall now proceed to the means you have of raising money for paying the necessary expenses, which have been incurred in the port to which you have been compelled to resort.—I am, &c.

LETTER XIII.

How money is to be raised for repairs—Pledging credit of owners—Drawing bills on them—Master obtaining repairs or money upon his own credit—Drawing upon the owners—Money must be absolutely necessary—And expressly borrowed for—Raising money where neither owners nor master known—Bond of bottomry—Essentials of—If marine interest stipulated, and sea risk excluded, bond void—By whom granted—By owner—By substituted master—To whom granted—Granted only in case of necessity—Where granted—Bonds of bottomry of great antiquity—And of a very high and privileged nature—Under what necessity master can grant bond—Necessity must be twofold—Instances of bottomry bonds being held invalid—Must be for advances made solely on security of ship—True cause of granting—Marine interest—When exorbitant—Good in part and bad in part—Whether lender bound to see application of money—If two or more bottomry bonds, last in date preferred—When bond payable—What discharges borrower—Proceedings for recovering payment—Master can pledge freight also—May sell a part, or hypothecate whole, of cargo—Sale of part must only be adequate to occasion—Must account to merchant—Underwriters not liable for loss—Hypothecation of whole cargo—Meaning of—Terms of bond of hypothecation—Recovery of sum advanced—Power of master to borrow—General authority—Owners responsible for money borrowed—General rule as to—Instances of—Opinion of Lord Abinger—Money must be borrowed expressly for ship—Lender must ascertain necessity for expenditure—Master expending his own money.

Gentlemen,—Let me assume, in the next place, that you are without money in a foreign port of distress, and that you have got the requisite repairs executed,—how, then, are you to pay for these repairs?

The first and most obvious method is, to pledge the credit of your owners, by drawing bills on them for the amount of these repairs; but you should recollect, that these bills ought to be drawn for necessaries only, and that the person in whose favour you may draw such bills, must, when required, prove the actual necessity for the supply of those things for which the bills are drawn (Abbot, 199). You ought, also, to make these bills bear the precise purpose for which they have been drawn, so as, in any question between the creditor and the owners, or yourself and your owners, these bills may bear evidence of that precise purpose (Scott *v.* Miller, 3 Bing. N. C., 811).

But, if your owners are not known, and have no credit, in the port of repair, perhaps you may obtain the repairs done, or raise money, upon your own credit and responsibility. And for the money so raised and necessarily expended, you have a claim to be relieved by your owners. For such money, you have also an implied authority to draw upon your owners, either in favour of the person who has made the repairs, or of him who has advanced you the money (Holt, 390). But this does not apply, to the effect of authorising you to take up an indefinite or unlimited supply of money, which, being

without control, you may dissipate; and will only warrant you in taking such a supply of cash as is required by the exigency of the case, and is absolutely necessary for paying the expenses of the repairs which the vessel may have received (Rocher *v.* Busher, 1 Starkie, 27). And, besides, although the money has been advanced to you by a third party, and it may be proved that you have applied it to the purposes of the ship, yet your owners are not liable to that third party, unless it can be proved that the money was advanced to you *expressly* for the purposes of the ship (Thacker *v.* Moates, 2 M. M., 79). But, although you yourself should advance money for these necessary repairs, you have no lien or preference over the ship, for the sum you may so advance (Smith *v.* Plummer, 1 B. A., 575).

So far it is plain sailing; but, take the case, that neither yourself nor your owners are known in the port to which you have been driven, and, consequently, that there is an impossibility of raising money to pay the expenses. You must, therefore, find some other security on which the lender may agree to advance money; and the first subject which presents itself is the ship; and, as this borrowing money on the security of the ship, is a matter of necessity, it requires to be considered in detail, so as to make you fully acquainted with the nature of the contract.

When money is borrowed by the master, on the security of his vessel, for the necessary purposes of the ship, the security which he grants the lender is called a bond of bottomry,—on the bottom or keel of the ship,—that being put for the whole of the ship,—as a security for its repayment. The authority of the master to pledge the ship by bottomry, for the purpose of raising money to pay for the absolute necessities of the ship, only arises when he cannot obtain the necessary advances upon the personal credit of the owners (Wallace *v.* Fielden, 7 Moo. P. C. C., 398); and it is essential to this bond of bottomry, that the money be lent upon the risk of the voyage, and that the liability of the lender to the sea risks, which are the same as in a policy of insurance, appear upon the face of the bond, or can fairly be collected from it. Maritime or marine interest, according to the rate at which the parties have agreed, must also be expressly stipulated in the bond, to distinguish it from a common loan, upon which the ordinary interest alone can be taken. The bond must also stipulate, that, if the vessel is lost by any of the perils mentioned in it, the lender loses his money; but that, if the ship arrive safe, then he is to be paid back his principal, and the marine interest agreed upon, however that interest may exceed the ordinary rate. Therefore, where a bond, bearing to be a bottomry bond, stipulated for the marine interest, but excluded the sea risks, and

was made payable at all events, within thirty days, either after the the safe arrival of the vessel, or after the account of her loss,—the bond was held to be void, both against the ship and the person of the borrower (Atlas, Clark, 2 Hag., 48). But, where the bond is drawn in legal form, and admitted to be entitled to payment, the parties will be bound by the terms of the agreement, and there will be no deduction made on account of the rate of exchange, as is made in ordinary mercantile transactions (Jane Vilet, Tindall, 2 Hag., 92).

A bond of bottomry may be granted by the owners, as well as by the master, where a sufficient necessity exists. And, therefore, where a bottomry bond was given for the necessities of the voyage, by an owner, who was on board the vessel, and who could not otherwise obtain money, the bond was held valid,—the master, who was on board, but to dispossess whom an action had been instituted, being privy to and receiving the supplies as necessary, though he refused to sign the bond (Duke of Bedford, Morris, 2 Hag., 294). But a bottomry bond, which was granted within three days of sailing, at the Mauritius, by a part-owner, who was really master, to a stranger, who took no step to ascertain whether the loan was required for the purposes of the ship, and the loan being larger than had been advertised for, while the balance in favour of the agents and consignees was small,—although, if the balance had not been discharged, they could have detained the vessel,—was held not to be valid (Orelia, Hudson, 3 Hag., 75).

It is not necessary that this bond of bottomry be granted by the master whom the owners themselves have appointed; a substituted master, or a master appointed of necessity, can also grant it, provided the necessity for the loan be distinctly established. Thus, where the consignees of the cargo had advanced money for the necessary repairs of the vessel, they were held to be justified in taking a bond of bottomry for the amount, from a person whom, as a measure of necessity, they had substituted for the former master (Alexander, Tate; 1 Dod., 278). And a bottomry bond, given by a substituted master, to the merchant who had appointed him, was sustained, although, in the charter-party, there was a stipulation that the disbursements for the ship should be made, free of commission, by the charterer's agent, not named,—the bond-holder having denied that he was agent,—having never seen the charter-party, and disclaiming any knowledge of such a clause (Rubicon; 3 Hag., 9). Even where the owners have abandoned, a substituted master,—whether appointed by the underwriter's agent, or the owner's agent, or by both, not appearing,—can grant a bottomry bond to a holder of a collateral security, and the bond will be sustained; and in the same case, it was doubted whether, on the owner's abandonment, had the

substituted master been appointed by the underwriters alone, he could not give such a bond (Kinnersley Castle; 3 Hag., 1). These bonds are the creatures of necessity and distress; and the general rule is, that they may be given by masters substituted and appointed abroad, and by masters by succession,—such masters being held to be the heirs of necessity to the former masters, as to the granting of these bonds; so that, in a case, noticed in the report of the case last referred to, where there was a succession of masters, (owing to a mortality which prevailed in the West Indies), who were appointed under different circumstances, and in different islands, and by the agents or consignees; and some of them gave bonds for repairs done, not by their own orders, but by the direction of others,—these bonds were sustained, there being nothing to impeach the integrity of the whole transaction (The Wakefield, per Sir C. Robinson).

As to who may be the lender,—the general rule is, that any person, who is in the capacity to contract, may lend money on bottomry (2 Mar., 748). It is no objection to a bottomry bond, though it be granted to the consignees of the cargo, for money advanced by them for the necessary repairs of the vessel, by a master whom they themselves had, as a matter of necessity, substituted for the former master (Alexander, *ut sup.*), although there may be also a consignee of the ship at the same port, who, however, was not willing to make the advances (Nelson, Brown; 1 Hag., 163). A bond of bottomry, given by a master to a foreign merchant, who had appointed him, was also sustained (Tartar, Thorp, 1 Hag., 1); and such a bond, given to the agent of the owner, who may think it unsafe to credit his employer, beyond a certain reasonable amount, or who has no fair reasonable expectation of being reimbursed, will be sustained (The Hero, 2 Dod., 139). And a bottomry bond, which recited, that the outward freight was insufficient to pay the just charges of the British Consul, and the necessary disbursements on the vessel, was sustained, although it was proved to have been given for the loan of money, in a great part required for payment of the consul's commission,—it being considered that the consul himself could have taken the bond (Zodiac, Scott; 1 Hag., 320).

These bonds are usually granted by the master, in a case of necessity, when in a foreign country, or in a port where he has no means of communicating with his owners; and, therefore, in the place of the owner's residence, the master is, in general, precluded from borrowing money on bottomry, and granting bottomry bonds (Abbot, 154). But, it may be questioned, what shall be considered as "the place of the owner's residence?" It is, no doubt, considered necessary to the validity of such bonds, that they should be granted in a foreign port, although the law does not look to the mere locality of

the transaction, but to the extreme difficulty of the communication between a master and his owners; and occasions may arise, particularly during the time of war, in which the different ports of the same kingdom may be as much separated, and cut off from all communication with each other, as if they were situated in the most distant parts of the globe (Abbot, 154). As, where, during the war in Spain, a Spanish vessel, on a voyage from Alicant to London, put into Corunna, a port of the same country, to repair, and the master, unknown and without credit, and having no means of communicating with his owners, granted a bond of bottomry, which was sustained (La Ysobel, Bozo; 1 Dod., 273). It is the opinion of Lord Tenterden, that the whole of England is to be considered, as to this purpose, as the "place of residence" of an Englishman, at least before the commencement of a voyage (Abbot, 156). Previous to the union with Ireland, it was held to be a foreign country, as to an English ship hypothecated by the master there, in the course of the voyage (Menetone *v.* Gibbons, 3 T. R., 267). But Lord Stowell doubted, whether, since the act of union with Ireland, by which it was incorporated as an integral part of the United Kingdom, this rule has not been altered (Rhadamanthe, Mayer; 1 Dod., 261). And, indeed, if the difficulty or impossibility of communication is to be taken as a criterion for giving validity to such transactions by a master, it is doubtful if any part of the United Kingdom can, in this sense, be held to be a foreign port. But it is now held, that a master can raise money by bottomry, though the owner resides in the same country, provided there is no means of communication with him, and the urgency of the case requires it (Wallace *v.* Fielden—7 Moo. P. C. C., 398).

Bonds of bottomry are of great antiquity, and have been adopted into the law of this country, from the general maritime law of Europe. In circumstances where the master cannot procure the necessary repairs or supplies for the vessel, on the personal credit or security of himself or his owners, he is at liberty to pledge the vessel itself, as a security to the lender, and to stipulate for the payment of interest, at a high rate, which, in other bonds, granted under other circumstance, would be held as oppressive. They are, therefore, of a very high and privileged nature, and were invented for the purpose of procuring the necessary supplies and repairs for vessels which may happen to be in distress, in a foreign port, where both the master and the owners are without credit, and where, were it not for the assistance, which could be secured by means of such bonds, the vessels and their cargoes must be left to perish. These bonds are considered valid, upon the ground of necessity only, and the very purpose for which they were created was, the protection of the party

advancing the money, who is presumed to be an entire stranger to the owners, and to have no means of judging of their solvency, as with them he has no communication, and has nothing to look to for his security, but the visible property of the vessel, in his place of residence.

It is only in a case of necessity, that the master is warranted in borrowing money on the security of a bottomry bond, or in granting such a bond for repairs or supplies. The general rule is, that "an unprovided necessity" is essential to the validity of such a bond; and, therefore, the want of this necessity will render the bond void, even against an innocent and honest lender, who may be ignorant of all the circumstances (Prince George, Shaw; 3 Hag., 376). The right of the master to take up money on bottomry, is matter of strict law, arising out of an unforeseen necessity; and, as he is not the owner of the ship, much less of the cargo, he cannot bind either the owner or part-owner of this property, or give one creditor a preference over another, unless in the special circumstances of necessity, and for the general interest of all parties in the protection and preservation of the whole. It is, therefore, a vital principle of these bonds, that they must have been granted and taken, where the owner was known to have no credit,—no resources for obtaining necessary supplies. It is this state of unprovided necessity that supports these bonds, and the absence of this necessity is their undoing. If the master takes the money from a person, who knows that he has a general credit in the place, or, at least, an empowered consignee or agent willing to satisfy his wants,—the giving of a bottomry bond is a void transaction, not affecting the property of the owner, only fixing loss and shame on the fraudulent lender. But, where these bonds have been honourably transacted, under an honest ignorance of this fact,—an ignorance that could not be removed by any reasonable inquiry,—it is the disposition of a court of law to uphold such bonds, as necessary for the support of commerce in its extremities of distress, and, as such, they have been recognised in the maritime codes of all commercial nations and ages.

The foregoing paragraph contains the substance of the opinions of the late learned judges of the Admiralty Court of England—Lord Stowell and Sir John Nicholl—as to the necessity which will authorise the master to take up money on bottomry. The bond must be granted by the master acting as such, and within the scope of his authority, for the purpose of supplying "an unprovided necessity;" and the necessity must be twofold,—first, a necessity of obtaining repairs or supplies in order to prosecute the voyage—and, second, the impossibility of obtaining these repairs or supplies in any other way than by the hypothecation of the ship (Horsey, Grimwood; 3

Hag., 409). So that, to authorise the master thus to borrow, this necessity must arise in the course of the voyage, and the money must be borrowed for the purpose of continuing it. It must be, generally at the least, in a foreign port where the repairs or supplies have become necessary; and the master's powers of borrowing on bottomry must arise, on account of his having no other credit, or means of obtaining money upon the credit of the property (Prince of Saxe Coburg; 3 Hag., 392).

Therefore, where the master of a vessel freighted and insured from London to Calcutta and back, employed as agents at Calcutta, a firm upon which he had a limited credit to complete a return cargo. He exhausted the credit, and took a cargo, under their advice, to the Mauritius; and, in a series of voyages, in defiance of letters from his owners to return home, came back to Calcutta, chartered to the same firm, who on a fresh cargo to the Mauritius received the freight, and, for a small balance, took a bottomry bond, without premium: it was held that, except as to the letter of credit, this firm had acted as the agents, and on the credit of the master, and, as there was shown no absolute necessity for the bottomry bond, to secure the return of the ship to England, that the bond was invalid (Reliance, Hays; 3 Hag., 66). And where a bottomry bond was given, at Hobart Town, by the master, under a threat of arrest, by the agent for the owners, for whose benefit, at least in part, the bond was entered into, on the day before the vessel sailed; and the bond recited, that it was to enable the master to "pay for necessaries supplied for the intended voyage, and for the use of the brig;" that bond, however, not having been previously conditioned for, was also held invalid (Horsey, *ut sup.*)

It is also essential to the validity of a bottomry bond, that the advances must have been made upon the exclusive security of the ship, and that no other security has been held out to the lenders (Augusta, De Bluhn; 1 Dod., 283); and, therefore, a bottomry bond will not cover advances made upon the security of the master, nor upon bills drawn by him upon his owners; although, if a bottomry bond has been originally contemplated, it will not be injured by bills being taken at the same time, by way of collateral security (St Catherine; 3 Hag., 250). And a bottomry bond may be given at same time with, and as a collateral security for, bills drawn on the owner for money borrowed by the master in a foreign port, for necessary repairs and disbursements (Stainbank *v.* Shepard, 17 Jur., 1032).

But, where bonds of bottomry have been granted, in circumstances of real and absolute necessity, and for legitimate purposes, they are to be liberally protected; and, as being granted for the

benefit of commerce, the courts in this country will uphold them with a very strong hand (Lord Stowell, in the Alexander, *ut sup.*)

The true cause of granting a bond of bottomry, as given by the writers on maritime law, is, that it must be granted in a case of necessity, and for necessary repairs or supplies, for the purpose of preserving the ship and cargo; and, under supplies, it has been held that sea stores, furnished to a vessel carrying passengers, and appropriated to the subsistence of the passengers, are included, and that these sea stores are objects of a bottomry bond (Duke of Bedford, *ut sup.*) It follows, that the master cannot grant a bond of bottomry for any private debt of his own (Abbot, 106).

It has been already stated, that, where money has been advanced upon the security of the vessel, and a bond of bottomry taken, the bond stipulates for a high rate of interest, and this rate must necessarily vary, like the premium of insurance, according to the agreement of parties and the risk to which the lender will be exposed. But where the interest stipulated for in the bond is exorbitant, or where the bond is affected with fraud or collusion, or with the vice of extortion, the Court of Admiralty will interfere, although with the utmost caution, in reducing the rate of interest to what is fair and reasonable in the circumstances (Cognac; 2 Hag., 388). And, although a lender on bottomry may insure the amount lent in a separate policy, on his own account, yet it is illegal to include in the sum, for which the bond has been granted, a charge of insurance on the money advanced to the master on bottomry (Bobbington's, Noy.; 2 Hag., 422). But the general rule is, that the court will not look closely into the various items covered by a bond of bottomry, when the necessity and the want of other means are proved, and no fraud or collusion is alleged (Calypso, Phalp; 3 Hag., 162); and, even though a bottomry bond is found to be bad in one part, that does not vitiate the rest of the bond (Tartar, *ut sup.*)

It has been made a question, whether the person who lends the money to the owner or master, is bound to see that the money so advanced by him is properly applied to the purposes of the vessel, for which it was borrowed. One thing is certain, as already mentioned, that the lender must satisfy himself, by reasonable inquiry, of there being an unprovided necessity for which the loan is required; and, in one case, a bottomry bond was held not valid, which had been granted at the Mauritius, within three days of the vessel's sailing, by a part owner, who was, in truth, the master at the time, to a stranger, who, previous to advancing the money, took no step to ascertain whether the loan was required for the purposes of the ship,—that loan being larger than had been advertised for,

and the balance in favour of the agents and consignees being small, though, in the event of that not being paid, they could have detained the vessel until that balance had been discharged (Orelia, *ut sup.*) In that case, Sir John Nicholl observed, "It may be a question, whether a lender on bottomry is bound to see to the application of the money he advances; but it is clear, that he must make due inquiry to ascertain that a necessity exists, and that without money, so advanced, the ship cannot proceed on her voyage. When a necessity has been ascertained, the lender may not be required to see to the application of the loan; but, when a ship has arrived with a considerable cargo, in a foreign port, and remained there for some time,—in the instance of the vessel in question, for two months, —and where the repairs have been unimportant, and all the stores previously furnished, and a person then advances money on bottomry, without seeing the necessity,—he does it at his own risk." But, if the money has been fairly and honestly advanced, in a case of absolute necessity, which justifies the master in obtaining the loan, his subsequent misapplication of it will not deprive the lender of the benefit of his security (The Gratitudine, Mazolla, 3 Rob., 207); nor, where the necessity exists, does the lender require, before advancing the money, to calculate the expediency of incurring the expense of the repairs; he does not need to judge whether it may be for the owner's advantage or not, to give the vessel the repairs (The Vibelia; 1 W. Rob., 1).

Where two or more bottomry bonds have been given, in the course of a voyage, under the pressure of necessity, in a foreign port, where the master or owners have no personal credit, and no other means of raising money, or procuring supplies for the repairs of the vessel, the rule is, that the bond last in date is entitled to be first paid, upon the principle, that the necessity for the last loan must have arisen out of the destitute state of the master, and his inability to procure the necessary supplies for his vessel, on the personal credit and security of himself, or his employers, and because it is held, that the last loan furnished the means of preserving the ship, and that without it, the former lenders would have entirely lost their security (Rhadamanthe, *ut sup.* Eliza, Weddell, 3 Hag., 37).

It is always a stipulation in a bottomry bond, that the sum lent with the premiums, or maritime interest, is to be paid, in a certain number of days, after the vessel arrives at her moorings in the port of discharge mentioned in it; but, if there be a total loss of the vessel by the perils of the sea,—not such a total loss as would render an underwriter liable, under a policy of insurance, but an absolute and utter destruction of the ship,—the granter will be discharged: and so it has been held, where a lender on bottomry effected an in-

snrance of the sum so lent,—that he conld not recover against the underwriters, nnless there has been an actnal total loss of the ship; for, if the ship be existing in specie, in the hands of the owners, though nnder circnmstances that wonld have entitled the insnred on the ship to abandon,—this will prevent it from being an utter loss, within the meaning of the bond (Thompson *v.* Ro. Ex. Ass. Co ; 1 M. S., 30).

If the money shonld not be repaid, with the maritime interest, within the time specified in the bond, the lender can proceed against the ship, in the Admiralty Court, and against the person of the borrower, in the courts of common law, in England; and in Scotland he can proceed both against the ship and the person, in the Court of Session, or the court of the judge ordinary of the bounds within which the borrower resides, and to which the vessel belongs. If the money be not paid when the sea risk is ended, then the ordinary interest begins to run npon the principal sum lent, but not npon the maritime interest (2 Mar., 758); although this is allowed by the United States of America (2 Arn., 1340).

Where the master, in a case of necessity, can pledge the ship for a loan taken up by him on bottomry, he can also pledge the freight to become due. And even the freight of a subsequent voyage may, under certain circumstances, be liable to the lender on bottomry for the sum in the bond. As, where a vessel was abont to sail on a voyage from Baltimore to Cork, and a bond of bottomry was granted in general terms, binding the ship and her freight; the vessel did not sail on her intended voyage to Cork, but sailed on a voyage from Baltimore to Dublin, and from that port, sailed on a second voyage to America, and then to London, where she was arrested by the bondholder:—and it was held, in these circumstances, that he was entitled to have the freight of this last voyage applied to the sum in his bond (The Jacob, Bear, 4 Rob., 205). It has been held also, that freight, payable by the snb-shippers of goods, by permission of the charterers of a whole ship, is liable, as against them, in payment of a bottomry bond, given at the port of the charterers, for advances made subsequent to the charter-party (The Eliza, *ut sup.*)

But, put the case, that you can find no one who will advance money on the security of the ship and freight,—what then are you to do? In snch a case of necessity, or where the security of the ship and freight are considered insufficient for the amount of the snm advanced, or the expense of repairs, &c., necessarily required, the rule is, that you have power *to sell a part* of the cargo, or to hypothecate the whole (Lord Stowell, in the Gratitndine, *ut sup.*)

In a case of necessity, it must be obvious to common sense, that it cannot be for the benefit of the cargo, nor can it be a discharge of your duty, to convey that cargo to its place of destination, for

you to sell *the whole*. The law allows you to sell a *part*, and although it has not fixed what that part should be, nor imposed any restraint, nor fixed any limitation to the extent of that part, yet it is evident, that that part must only be adequate to the necessity of the occasion which authorises you to sell. In this case, the general rule must always be before you,—that you can only do that, which a wise and prudent man would think is most conducive to the benefit of all concerned. And you should recollect, that, if the vessel reach her place of destination, you or your owners must account to the merchant for the clear value for which the goods might have been sold at that place; or, if he pleases, he may take the sum for which the goods have actually been sold, and which he can deduct from the freight for the rest of the cargo, even though the owner may have assigned that freight to a third party;—although, if, after leaving the port of necessity, the vessel and cargo on board should perish before reaching the port of destination, the general and better opinion seems to be, that the merchant has no claim for the value of that part of his goods, which may have been sold from necessity (Abbot, 372). In any case, however, where a vessel is under the necessity of putting into a port to repair, and, in order to defray the expenses of these repairs, and having no other means of raising the money, the master sells part of the cargo, and applies the proceeds in the payment of these repairs, the underwriters upon the goods are not answerable for that loss,—the sale of these goods having been rendered necessary, not by any of the perils insured against, but merely by the inability of the master to raise money in any other way, to pay for the repairs of the vessel (Powell *v.* Gudgeon, 5 M. S., 431. Sarquay *v.* Hebson, 2 B. C., 7).

The same law which permits you, in the case of necessity, already assumed, to sell a part of the cargo, also authorises you, in such a case of necessity, to hypothecate the whole cargo, as a security for the advances made to relieve the vessel from that necessity. The meaning of hypothecation is, that it "imports a pledge without immediate change of possession, in which the possession of the thing pledged does not pass to the creditor; it gives a right to the party who makes advances upon the faith of it, to have the possession, if his advances are not repaid at the stipulated time; but it leaves to the proprietor of the things that may be hypothecated, the power of making such repayment, and thereby freeing them from the obligation" (Abbot, 366). In the bond, by which the master hypothecates the ship and cargo, he acknowledges to have received the principal sum advanced, on the security of the hull, keel, and appurtenances of the ship, and of the cargo of the same, on which the lender had effectually invested it, and he binds himself, within a certain

period after arrival at the destined port, to repay the principal, and the premium of risk and sea exchange at the agreed on rate; in consideration of which premium, the lender agrees to run the enumerated sea risks on the hull, keel, and cargo and appnrtenances of the ship during the specified voyage; and, for the more ready repayment of the principal and premium, the master binds himself and his effects in general, and by special mortgage, the cargo and freights due, or that may become dne. But the master has no authority so to hypothecate for money borrowed at a foreign port for necessary repairs and disbursements, and, by the same instrument, to pledge the personal credit of his owner, for the money so advanced, whether maritime interest be stipnlated for or not,—althongh, as has been already seen, bills may, at same time, be drawn on the owners, as a collateral security for the money so borrowed (Stainbank *v.* Shepard, 17 Jur., 1032). Previous to thus hypothecating the cargo, however, and where the distance between the port of distress where the ship is, and the port of destination, is not so great, and the means of commnnication are not such as to render commnnication difficult and inexpedient,—it is essential to the validity of such a bond,—so far as the cargo is concerned,—that the master should communicate with the owners of the cargo, before resorting to the hypothecation of it,—if he could have obtained an answer, within a period not inconsistent with the exigency of the circumstances of the case (Wilkinson *v.* Wilson, 8 Moo. P. C. C., 459).

Under a bond of hypothecation, in the above terms, the ship and freight are usually the first parts of the security which a lender will render available for his payment; and therefore, it will only be the balance of the sum advanced, left unpaid from these sources, for which the cargo will be liable. But, even although the cargo should be made more immediately answerable to the lender, and he should recover from it the whole amount of his security, yet the ship and freight are also liable in contribution, for the sum thns realised from the cargo, to the extent of their value.

Before concluding this letter, it may be proper to say a few words, on the authority of the master to pledge the credit of his owners for money borrowed by him.

To the public, the master appears as the agent of his owners, in places where they do not reside, and have no established and known agent, and very often, also in the place of their residence, in all matters connected with the usnal employment of his vessel, and the means of so employing her,—as fitting her ont, victualling, and manning her; and, for the debts contracted in doing which, the owners are liable; and, although it be a condition in a charter-party, that the charterer is to supply cash to the master for disbursements,

for which the master is to draw bills on his owners, and the charterer, through his agent at the outport, supplies goods for the use of the crew, and pays money demands on the master, for the amount of which no bills are drawn, as was agreed on, but he advances no actual cash,—yet the owner is liable to the charterer for the amount, because, independently of the special stipulation in the charter-party, the master has authority to obtain supplies of goods and necessaries for the use of the ship (Weston *v.* Wright; 7 M. W., 396). This authority of the master is, however, subject to the restriction, that it must be made to appear that the supplies furnished upon the master's order, are reasonably fit and proper for the occasion; and, under the same restriction, the master may borrow money in certain circumstances, in order to purchase what, at the time, appears to be wanting for that purpose; and for the money so borrowed, he can pledge the credit of his owner, and the owner will be personally responsible to the lender. In such a case, the rule has been stated to be, that "the money supplied must not be understood of an indefinite supply of cash, which the master may dissipate, but such as is warranted by the exigency of the case, as for the payment of duties, or other necessary purposes" (Lord Ellenborough, in Rocher *v.* Busher; 1 Stark., 27).

Upon this principle, it has been held, in the case of a vessel, which had been engaged, and absent four years and a half in the transport service,—having arrived in the port of Portsmouth, where she received orders from the transport board to proceed to Deptford; —the master borrowed money to pay the seamen's wages,—Portsmouth being a port of discharge,—and to pay tradesmen's bills for articles supplied for the ship's use there;—and the lender obtained a verdict or decreet against the owner, to the extent of the sum borrowed for the seamen's wages (Robinson *v.* Lyall; 7 Price, 592). In another case, a coasting vessel,—the owners of which resided in North Wales,—was at Cardiff, in Glamorganshire, and the master borrowed money for the necessary use of the ship, and for the sum so borrowed, the owners were found liable (Arthur *v.* Barton; 6 M. W., 188). The opinion delivered by the Chief Baron, Lord Abinger, when the case was heard in the Court of Exchequer, is so valuable and full of instruction, that I need make no excuse for enriching this letter with it.

In delivering the judgment of the court, Lord Abinger said,— "Under the general authority which the master of a ship has, he may make contracts, and do all things necessary for the due and proper prosecution of the voyage in which the ship is engaged. But this authority does not usually extend to cases where the owner can himself interfere, as in a home port, or in a port in which he has

before-hand appointed an agent, who can personally interfere to do the things required. Therefore, if the owner, or his personal agent, be at the port, or so near to it as to be reasonably expected to interfere personally, the master cannot, unless personally authorised, or unless there be some custom of trade authorising it, pledge the owner's credit at all, but must leave it to him or his agent to do what is necessary. But, if the vessel be in a foreign port, where the owner has no agent, or, if in an English port, but at a distance from the owner's residence, and provisions or other things require to be provided promptly, then the occasion authorises the master to pledge the credit of his owner. But, then, the farther question arises,—for what things he may pledge that credit? This also is limited to such things as are necessary, or, as both Lord Tenterden in his book of the law of merchant ships and seamen, and Mr Justice Story, in his valuable work on agency, very clearly lay it down, to such things as are reasonably fit and proper for the ship or the voyage, under the circumstances of the case. But, if repairs are needed, it is admitted that he may pledge his owner's credit for them; but repairs are only instances of the rule. If, therefore, money be necessary, it may he raised upon credit. In the case cited, Robinson *v.* Lyall (as above), this was done. There, without money, the wages of the seamen could not be paid, and, unless they were paid, the seamen might have refused to assist in the farther management of the ship. So, also, it may be necessary, in some cases, to pay harbour dues, or pilotage, or the like, and to pay them in ready money; and if that be the case, and the prosecution of the voyage cannot take place till they are discharged, then, also a necessity for having money in specie may arise; and, if so, the master would be authorised, under his general power of doing all things necessary for the due prosecution of the voyage, to procure money by loan, and to bind the owner by a contract for that purpose. It is not doubted that, in a foreign port, where the owner has no agent, this may be done; and we think that all those questions are referable to one general principle, although, when it is applied to a case like the present, it will require stronger circumstances to establish the fact of the necessity upon which the liability of the owner must depend."

To so high an opinion, it would be presumption in me to add; and I will only notice, that although the master has power to borrow money, the owners will not be liable for it to the lender, unless it has been advanced expressly for the use of the ship, even although it may have been expended by the master for that purpose (Thacker *v.* Moates; 2 M. M., 79).

But it is necessary that the lender should ascertain, and be able

to prove, that there is a necessity for the expenditure which the loan is required to defray; and also, that the money so procured in loan has been necessarily expended for these purposes; because, unless it can be proved that the money was borrowed for the neeessary purposes of the vessel, and has been necessarily expended by the master for these purposes, the owners will not be liable for it (Carey *v.* White; 1 Brown's P. C., 284).

Should the master, in place of borrowing money from a third party, expend his own money for the benefit, or in the neeessary purposes, of the ship, the owner is liable to repay him (Abbot, 139).

So much of the master's power of raising and borrowing money, and the modes he has of doing so. In the next letter, I proceed to another incident of a voyage.—I am, &c.

LETTER XIV.

Collision—From neglect—Or violence of elements—Lord Stowell's division of possibilities, under which may occur—Without blame—Where both to blame—Fault of sufferers—Or fault of other party—From physical causes—Where both vessels to blame—From the fault of one vessel—Rules of the Sea—In Rivers—In going in or out of port—As to steam-vessels—Trinity House order—Of binding authority upon steam-vessels—Rule for apportioning damage—When both in fault—When one only, and she injured—Preparation made against coming danger—If damage from neglect of vessel injured—Must fall on owners—Evidence in case of collision—One vessel only in fault—Vessel under charge of licensed pilot—Opinion of Sir John Nicholl—Employment of pilots—When compulsory or optional—Damage from a peril of the sea under policy—Underwriters not liable for sum paid to other vessels—Nor for wages and maintenance of crew—Cargo lost or damaged—Must be included in contribution—Owner of, can pursue owner of vessel in fault—Cargo not liable—Claims between ship and cargo—If collision happen through negligence, &c.—Owners of ship liable to owners of goods—If not, not liable—Responsibility of owners and masters.

Gentlemen,—I now come to another danger incident to vessels at sea, in rivers, or in harbours, and which, whether a vessel be at sea or at anchor, or whether she be under the charge of a licensed pilot or not, will require the utmost vigilance, attention, and outlook on the part of you and your crew, to avoid or prevent; I mean an injury by collision, or one vessel driving against or running foul of another.

It would be too much to say, that every accident arising from collision is to be attributed to the carelessness, neglect, or ignorance, or want of precaution, of one or both of the parties; but it is not going too far to say, that, at least, two-thirds of such accidents arise, if not wholly, at least chiefly, from a want of that proper knowledge, vigilance, and precaution which should at all times be

exercised, and that a very small portion of such accidents are referable solely to the violence of the elements, over which man has no control. It was held by Lord Stowell, that there are four possibilities under which an accident by collision may occur. In the first place, it may happen without blame being imputable to either party, as where the loss is occasioned by a storm, or any other greater force. In that case, the misfortune must be borne by the party on whom it happens to light, the other not being responsible to him in any degree. Secondly, a misfortune of this kind may arise, where both parties are to blame, where there has been a want of due vigilance or of skill on both sides. In such a case, the rule of law is, that the loss must be apportioned between them, as having been occasioned by the fault of both of them. Thirdly, it may happen by the misconduct of the suffering party, and then the rule is, that the sufferer must bear his own burden. Lastly, it may have been the sole fault of the ship which ran the other down, and, in this case, the injured party would be entitled to an entire compensation from the other (*Woodrop*, Sims, 2 Dod., 84).

Where the accident arises from physical causes,—as from the violence of the winds or seas, from the effects of a hurricane, a storm, lightning, or other natural causes, which human prudence could not guard against, and in no degree from the act of man, it is held to be the act of God; as, if the vessel were, by the violence of the wind, or of a storm, driven from her moorings, and coming in collision with another vessel, sink her, or be sunk herself,—neither ship being to blame,—this must be taken to be one of the perils of the sea, and the suffering party must bear his own loss.

Should both vessels be to blame, the rule is, that the damages to both, or either, must be apportioned equally, without regard to the value of the vessels, or their cargoes; but, in determining the question of blame, there falls to be considered, the established rules of the sea,—the usages and regulations of particular ports and rivers,—the state of the wind,—the tide,—the extent of light,—the degree of vigilance and precaution exercised by the masters and crews, and all other circumstances bearing upon the conduct and management of both vessels. It is a general rule, however, that the masters of both vessels must exercise ordinary care and caution, as no man is at liberty to cast himself upon an obstruction, which has been made by the fault of another, and avail himself of it,—if he himself do not use common and ordinary caution to be in the right (Abbot, 238).

When the collision arises from the fault or negligence,—actual, possible, or presumed,—of the one vessel, without any fault or negligence being attributable to the other vessel, the clear rule, arising from a proof of the fault or negligence, is, that the wrong-doing

vessel must bear the loss (*The Ligo*, Ligo, 2 Hag., 356). But, if it is impossible to ascertain to whose fault the collision is imputable, or by whose fault or negligence the injuries have been occasioned, then the whole amount of the injuries must be ascertained and borne equally by each vessel.

There are certain rules of the sea, which are sanctioned by the Court of Admiralty, and which are now incorporated, by the following enactments, into the Merchant Shipping Act:—"Whenever any ship, whether a steam or sailing ship, proceeding in one direction, meets another ship, whether steam or sailing, proceeding in another direction,—so that if both ships were to continue their respective courses, they would pass so near, as to involve any risk of collision,—the helms of both ships must be put to port so as to pass on the port side of each other;—and this rule is to be obeyed by all steam-ships and by all sailing-ships whether on the port or starboard tack, and whether closehauled or not,—unless the circumstances of any case are such as to render a departure from the rule necessary, in order to avoid immediate danger, and always providing, that due regard must be had to the dangers of navigation, and, as regards sailing-ships on the starboard tack closehauled, to keeping them under command" (§ 296). And when steam-ships are navigating a narrow channel, they must,—whenever it is safe and practicable,—keep to that side of the fair-way or mid-channel which lies on the starboard side of the steam-ship (§ 297).

It is the invariable rule and practice, by all classes of vessels navigating rivers, to take every advantage of the tide, which the localities of such rivers may afford; and, in conformity with such rule or practice, vessels going with the tide down the river Thames, keep in mid-channel, for the purpose of getting the benefit of the tide; and vessels coming up the river, against the tide, keep as near as may be to one or other of the shores; and, when so coming up the river, in Halfway Reach, by reason of the ebb tide then setting towards the north or Essex shore, keep on the south or Kentish shore, for the purpose of avoiding, as much as possible, the strength of the tide (*The Friends*, 7 Jur., 307).

In order to guard against the danger of collision, the following reasonable rules should be attended to by masters. When two ships are to enter into the same port, the farthest off must wait until the other has got in; and, in case of collision, the one that has arrived last, is answerable for the damage, unless the master prove that he was not in fault. If two vessels meet, the smaller must give way. A vessel going out of harbour must make way for one coming in. When a collision takes place between two vessels, both leaving a port, the one that went out last, is to be deemed to have run against the

other (Abbot, 238); and to steam-vessels, the rule is, that, from their greater power, and being always under more immediate command, they must give way; so, where a steam-vessel had seen another vessel about five miles off, but the other vessel had not seen the steam-vessel till just before the collision against the latter, the steam-vessel was found liable in damages and costs, although, had the steam-vessel followed the rule of navigation, the accident could not have happened (*Shannon*, Pennefather, 2 Hag., 173). Where a steam-vessel was coming up the Thames on the Kentish shore, distant about one-half of the whole breadth of the reach, the night being dark, the tide ebbing, and the wind blowing strong from the west, she observed a vessel coming down the river, just open over the starboard bow, and, as soon as the vessel was reported, the helm of the steam-vessel was put to starboard, in belief that the sailing vessel would keep down the mid-channel, in order to go down with the strength of the tide:—it was held, that the steam-vessel did wrong in putting her helm to starboard, and that the sailing-vessel conducted herself properly (*The Friends*, *ut sup.*) And where a steam-vessel, going in a fog, with unabated speed, in a track frequented by coasters, and which did not, when hailed, order her engines to be stopped, and a collision ensued,—the steam vessel was found liable in the amount of the damages and expenses (*The Perth*, Spink, 3 Hag., 414).

By the Merchant Shipping Act, the Admiralty are empowered, from time to time, to make regulations requiring the exhibition of such lights and the use of such fog-signals, by such classes of ships,—whether steam or sailing ships,—within such places, and under such circumstances as they think fit (17 & 18 V., c. 104 § 295). The Admiralty have made the following regulations requiring the exhibition of lights by steam and sailing ships:—

Steam-vessels.—All British sea-going steam-vessels (whether propelled by paddles or screws) must, within all seas, gulfs, channels, straits, bays, creeks, roadsteads, harbours, havens, ports, and rivers, and under all circumstances, between sunset and sunrise, exhibit lights of such descriptions, and in such manner, as after mentioned:—

When under steam.
- A bright white light at the foremast-head.
- A green light on the starboard side.
- A red light on the port side.

1. The mast-head light is to be visible at a distance of at least five miles in a dark night, with a clear atmosphere; and the lantern is to be so constructed as to shew a uniform and unbroken light over an arc of the horizon of twenty points of the compass, being ten points on each side of the ship,—viz., from right ahead to two

points abaft the beam on either side. 2. The green light on the starboard side is to be visible at a distance of at least two miles in a dark night, with a clear atmosphere; and the lantern is to be so constructed as to shew a uniform and unbroken light over an arc of the horizon of ten points of the compass,—viz., from right ahead to two points abaft the beam on the starboard side. 3. The red light on the port side is likewise to be fitted so as to throw its light the same distance on that side. 4. The side lights are also to be fitted with screens on the inboard side, of at least three feet long, to prevent the lights being seen across the bow.

When at anchor.—A common bright light.

Sailing-vessels.—All sailing-vessels, when under sail or being towed, approaching or being approached by any other vessel, are bound to shew, between sunset and sunrise, a bright light, in such a position as can be best seen by such vessel or vessels, and in sufficient time to avoid collision. All sailing-vessels at anchor in roadsteads or fairways, are bound to exhibit, between sunset and sunrise, a constant bright light at the mast-head; except within harbours or other places, where regulations for other lights for ships are legally established. The lantern to be used when at anchor, both by steam-vessels and sailing-vessels, is to be so constructed as to shew a clear, good light all round the horizon.

Printed copies of the above regulations, with diagrams annexed, illustrating this mode of fitting the lights, are furnished, by the Admiralty, to any owner or master requiring the same; and all owners and masters are bound to take notice of the Admiralty regulations requiring the exhibition of lights and the use of fog-signals,—and they must, so long as these regulations continue in force, exhibit such lights and use such fog-signals,—within such places,—at such times,—in such manner,—and under such circumstances as are enjoined by these regulations,—and must not exhibit any other lights or use any other fog-signals. In case of default, the master, or the owner (if it appears he was in fault), incurs,—for each occasion upon which these regulations are infringed,—a penalty not exceeding £20 (17 & 18 V., c. 104 § 295).

These Admiralty regulations for the exhibition of lights must be literally and strictly complied with (Valentine *v.* Clough, 8 E. F., Moo., 167); and in reference thereto, it has been held, that where steam-vessels are navigating under these rules, with respect to the number and colour of the lights to be carried, it is essential that the master of each vessel should have his lights properly trimmed and burning; and, therefore, where the green light of one vessel had gone out previous to the collision, and the master of another vessel, upon the supposition that the approaching vessel was a sailing one,

—having acted in conformity with the general rules of navigation by porting his helm,—this plea was sustained (*The Rob Roy*, 3 Rob. Adm., C., 190). And in an action by the owners of a steam-vessel, which had shewn the proper lights, for a collision,—it is for the jury to say whether or not the master of the other vessel has disobeyed the directions of the statute, as to putting his helm to port, and that it did not rest on the master's opinion as to the probability of a collision (Gen. Steam Navig. Co. *v.* Mann, 14 C. B., 127). But, where a barque, anchored in a proper place, *with a light hoisted on the larboard mizzen-rigging*, was run into by a steamer proceeding in her proper course,—it was held upon appeal, that the regulations were not complied with, as the light ought to have been exhibited at the mast-head;—that the collision was attributable to the barque's departure from the regulations, in neglecting to exhibit the light from the mast-head;—and that, consequently, the owner of the barque was not entitled to recover against the steamer (Valentine, *ut sup.*)

But a vessel is not barred of her remedy, in a case of collision, by the mere fact of her having neglected to shew a light according to the Admiralty orders, unless it appears that this neglect in some degree contributed to the accident (*The Panther*, 1 Eccl. & Adm., Rep., 31). Although, where the fact that neither vessel exhibited a light, was unnoticed in the pleadings and the argument,—it was held, that as lights ought to have been exhibited, neither vessel could recover, and each party must pay his own costs, though one of the vessels be clearly to blame (*The Aliwal*, 18 Jur., 296).

By the Merchant Shipping Act, it is enacted, that, if, in any case of collision, it appears to the court before which the case is tried, that the collision was occasioned by the non-observance of any rule for the exhibition of lights or the use of fog-signals,—or of the foregoing rule for the passing of steam and sailing ships,—or of the rule as to a steam-ship keeping to that side of a narrow channel which lies on the starboard side,—the owner of the ship by which the rule has been infringed, is not entitled to recover any recompense whatever for any damage sustained by his ship in that collision,—unless it is shewn to the satisfaction of the court, that the circumstances of the case made a departure from the rule necessary (§ 298). The case of Valentine *v.* Clengh, above referred to, may be taken as an illustration of this enactment; and in an action by the owner of a collier against the owners of a steam-vessel, for injury done to the former in a collision by night,—the jury having found,—that there was fault on the part of the collier in not continuing the light till the danger was past;—that the steamer was going at too great a speed on so dark a night, in which respect there

was want of caution, but that it was impossible to have avoided the accident when the steamer came within two or three collier's length;—and that the preponderance of blame was with the steamer:—it was held, that the jury must be taken to have found, by their first answer, that the negligence of the master in not complying with the Admiralty regulations, directly contributed to the accident, although there was negligence on the other side;—and that, therefore, there was a good defence to the action (Dowell *v.* Gen. Steam Navig. Co., 1 Jur., N. S., 800).

It is also enacted, that in case any damage to person or property arises from the non-observance *by any ship* of any of the foresaid rules,—this damage is to be deemed to have been occasioned by the wilful default *of the person in charge of the deck of that ship at the time*, unless it is shewn to the satisfaction of the court, that the circumstances made a departure from the rule necessary (§ 299). And, with reference to the words in italics,—in an action by the owners of a steam-vessel, setting forth, that they were possessed of a steam-vessel then proceeding down the Thames, in the roadstead or fairway of Gravesend Reach;—that the defendant was then possessed of a sea-going and sailing vessel, then being at anchor in the same roadstead or fairway, between the hours of sunset and sunrise, and under the care and management of the servants of the defendant;—that it was their duty to exhibit a bright light at the mast-head of the defendant's vessel;—but that, by and through the carelessness and neglect of the defendant in not exhibiting the bright light at the mast-head of his vessel, the steam-vessel ran foul of and struck the vessel of the defendant, and greatly broke and damaged the plaintiff's steam-vessel:—it was held, that this declaration disclosed no breach *by the defendant* of any duty imposed *upon him* by the statute,—and that, striking out the allegations as to the statute, the declaration disclosed no cause of action,—it being consistent with the statements therein, that the damages resulted from the plaintiff's own negligence (Gen. Steam Navig. Co. *v.* Morrison, 13 C. B., 581).

It has been already mentioned, that, where both vessels are in fault, the damage done to both or either, is to be equally divided between the vessels, and not proportionably, according to the value of each ship and cargo. This was solemnly decided by the House of Lords, in a case where a vessel had made her way into the Frith of Forth, and, in consequence of the state of the weather, had come to an anchor in the fairway, at some distance from the island of Inchkeith, and, during a very blowing night, while she was in this position, but without any light in her binnacle, she was run down by another vessel, which, when she saw the vessel lying at anchor,

put her helm hard down, in place of hard up, and the other vessel and her cargo were sunk ;—both vessels being in fault, were found equally liable in the damage of the vessel and cargo sunk and lost (Hay v. Le Neve, 2 Shaw's Ap. C., 395). And where the parties are mutually blameable in not taking the necessary measnres to prevent the collision, it is the rule of the Admiralty Court to apportion the damages equally between the respective owners of the vessels (Vaux v. Sheffer, 8 E. F., Moo., 75). As where a closehanled vessel on the larboard tack, and a starboard tacked vessel with the wind free, meet each other, and neither gives way in time,—both vessels are held equally in fanlt (*The Commerce*, 3 Rob. Adm., C., 287). It is a matter of no moment, that one of the vessels is more in fanlt than the other. It is, however, always a question of fact:—was the vessel actually under charge of a qualified pilot? or, was the collision attributed solely to his fault or incapacity? or, was it impntable partly to the fault or incapacity of the pilot, and partly to the neglect or nnskilfulness of the crew? It is the general rule, that when a vessel is proceeding to sea under charge of a qnalified pilot, and throngh his mismanagement, damage is done,—the owners will not be exonerated, unless they shew that the damage was occasioned exclnsively by the fanlt of the pilot (Rodriguez v. Melhnish, 24 L. J. Exch., 26). And where the canse of collision is the joint act of the pilot and the master, the owners and master will not be exonerated under the section before referred to (Hammond v. Rogers, 7 E. F., Moo., 160). And a vessel, thongh with a qualified pilot on board, will be condemned in a case of collision, where the fault is equally imputable to the pilot and the crew on board (*The Lochlibo ;* 3 Rob. Adm., C., 310). But where both vessels are to blame, though, with respect to one of them, the blame is to be attribnted to the pilot who had been taken on board under the Liverpool Local Pilot Act:—it was held that this vessel was not to contribute to the loss (*The Montreal*, 17 Jur., 538). If, however, the damage has arisen from the neglect or fault of the vessel injured, the owners mnst bear their own loss (*Ligo*, Ligo, 2 Hag., 356).

The real cause of the collision is often very difficult to be discovered, owing to such accident happening so freqnently in the darkness of night ; or it is accompanied with so mnch confnsion or agitation, or attended with feelings of irritation or self-interest, which poisons the sonrces of evidence. It was remarked by a learned judge of the Court of Admiralty, that "it frequently happens in cases of this kind, that there is a great discordance of evidence as to the facts npon which the conrt has to form its decision. The testimony of the witnesses is apt to be discolonred by their feelings, and the

interest which they take in the success of the cause; and the court too frequently has to decide upon great diversities of statements as to the courses the vessels were steering, or the quarter from which the wind was blowing at the time" (Lord Stowell, in the *Woodrop, ut sup.*) But the crew of the vessel charged with committing the damage, are to be admitted as witnesses, on the ground of necessity, and because no other evidence could be expected; although, when they are sharers in the profit and loss of the voyage, they cannot swear that they are not interested in the result (*Catherine* of Dover, Davison, 2 Hag., 145).

It has been already said, that, where both vessels have been in fault, the whole damage must be borne equally by the owners of both; and if the vessel injured was alone to blame, or if the collision was attributable to a neglect on her part, the owners must bear their own loss. But if one of the vessels is solely in fault, as where the vessel producing the collision, having the wind free in daylight, the course taken by her was voluntary, and there was, at least, a hazard unnecessarily occasioned by the fault of those on board (*The Thames*, Drummond, 5 Rob., 343), the owners will be liable to the extent and value of their vessel. If, however, the damage arises purely from accident or physical causes, or the act of God, as it is called, the loss must rest where it falls (*Woodrop, ut sup.*) No owner or master shall be answerable to any person whatever, for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of his ship, in any district within which the employment of such pilot is compulsory by law (§ 388).

The foregoing rules as to cases of collision apply to foreign as well as to British vessels; and the Merchant Shipping Act enacts, that whenever any injury has been caused, in any part of the world, to any property belonging to her Majesty or to any of her Majesty's subjects, by a foreign ship,—if that ship is found, any time thereafter, in any port or river of the United Kingdom, or within three miles of the coast thereof, then, upon its being shewn by any person applying summarily to the judge of any court of Record in the United Kingdom, or to the judges of the High Court of Admiralty, or, in Scotland, to the Court of Session, or sheriff of the county within whose jurisdiction that foreign ship may be, that the injury was probably caused by the misconduct or want of skill of the master or mariners of the foreign ship, the judges so applied to can issue an order directed to any officer of the customs or other officer named by the judge, requiring him to detain that foreign ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of the injury complained of, or has given security, to be approved by the judge, to abide the event of any action or other

legal proceeding that may be instituted in respect of this injury, and to pay all costs and damages that may be awarded therein; and the officer of customs or other officer to whom an order as aforesaid is directed, must detain that foreign ship accordingly (§ 527).

Should it appear that, before this summary application can be made, the foreign ship will have departed beyond the limits therein mentioned, then any commissioned officer on full pay in her Majesty's military or naval service, or any British officer of customs, or any British consular officer, can detain that foreign ship until such time as will allow this summary application to be made, and the result thereof communicated to him (§ 528). And in the action or other proceeding, the person giving the security is held to be the owner of the ship that has occasioned the damage, and is so made the party defending (§ 529).

Even although the vessel be under the charge of a qualified pilot, the question still remains, Why should the master, in the case of a seen evil, or of an impending accident, not interfere? I cannot do better than quote the words of Sir John Nicholl, in a case in which the captain of a foreign vessel was found liable for the full amount of the damage arising from a collision, for which he was alone to blame, notwithstanding of the provisions in the then English Pilotage Act. He remarked, "Did the accident arise from the neglect, default, incompetency, or incapacity of the pilot? or, was the master equally in fault? It occurred from the vessel going on in the fog,—not from an act of bad steerage, want of knowledge of shoals, or any incapacity as pilot, but from proceeding at all. It seems to be nearly admitted, that, if the vessel had set off in this fog, blame would have been imputable to the master; if so, was he not blameable in going on in the fog? Had he not a right to resume his authority? Did he not owe it to his owners, and to other persons whose property might be damaged by a collision, to insist on bringing the vessel up? Was not the master in duty bound, at least to remonstrate with the pilot, and to represent the danger of proceeding? Yet, he says in his affidavit, he did not in the least interfere. In this aspect, the case is, as far as I am aware, new, and one of too much difficulty to arrive at any hasty decision upon, unless there be no other points upon which the case may be disposed of" (*Girolamo*, 3 Hag., 169).

The damage arising from collision, unless it be imputable to the mismanagement or misconduct of the master or mariners of the vessel damaged, is a loss by the perils of the sea, within a policy of insurance, and is a subject of particular average, of which I will treat in the following letter. But if, in consequence of the collision, the vessel insured has done more damage than she has received, and, under the rule in Admiralty, of adding together the amount of damage

done to both ships, and dividing the combined amount equally between the owners of the two, the vessel insured has to pay a damage to the other vessel: this is not a loss to which the underwriters are liable, nor are they liable for the expense of the wages and maintenance of the crew during the time the vessel is detained in repairing the damage done to herself (Vaux *v.* Salvador, 4 A. E., 420).

If the cargo be damaged or lost by the collision, the damage sustained, or the value of the cargo, is included in the amount of the damages. And, in a case already referred to, where one of the vessels and her cargo were sunk, in consequence of a collision, in which both vessels were in fault, the whole damage sustained by the former vessel and her cargo, was appointed to be borne equally by the parties (Hay *v.* Le Neve, *ut sup.*) An action can be maintained by the owner of the goods lost or damaged by a collision, against the owners of the vessel in fault (Abbot, 240). In this country, the cargo of the vessel in fault cannot be made liable in contribution to the expense, because in no sense can the collision be in any way imputable to it; and, besides, although the owner of the goods is burdened with a share of the contribution, the owner of the vessel is bound to relieve him of any sum he may pay on this account (*Ibid.*)

As between the ship and the cargo, the following distinction is admitted:—if the collision has happened through the negligence or misconduct of the master or crew, or could have been prevented by them, the owners of the vessel are liable, on the charter-party, to the owner of the goods; but if the collision was such as no human prudence could guard against, or if it has happened without fault, then it is a peril of the sea, within the usual exception of the charter-party. As, in an action by a merchant against the owner of a vessel, for not conveying his goods,—the vessel was run down in daylight, and not in a tempest, by one of two other vessels sailing in an opposite direction to her, both of which kept to windward, as did also the vessel run down; but it was matter of so much doubt, whether the master ought to have understood the course which the others would pursue, and have borne to leeward to avoid them, that no blame was considered to be imputable to him for not doing so, and no fault was attributed to either of the other ships; and, therefore, the loss of the goods was held to have happened by a peril of the sea, and to be within the meaning of the exception (Buller *v.* Fisher, 1 Esp., 67).

The responsibility of the owners of the vessel for damages done by collision, is limited to the value of the ship, and of the freight due, or to grow due, as will be afterwards explained (*Richmond*, West, 3 Hag., 431); but the statutes limiting their responsibility do not apply to the master or mariners.

You will bear in mind, that there must be an entry in the official log-book of every collision with every other ship, and of the circumstances under which the same occurred; and this entry must be signed by yourself, and by your mate or some other of your crew (17 and 18 Vic., c. 104, §§ 28, 23).—I am, &c.

LETTER XV.

Particular average or partial loss—Meaning of the term—As understood in ordinary use—In regard to the ship—Destruction of by fire—Loss from mistake, &c., of master or mariners—From perils of the sea—Vessel must be sufficiently tight and strong—Loss from tear and wear—From extraordinary causes—Different degrees of seaworthiness—Instances of—One-third of expense of repairs deducted in settling with underwriters—Partial loss upon goods—Rules for ascertaining value of part of goods lost—In valued or open policy—Partial damage—Lord Mansfield's rule for ascertaining—In valued policy—In open policy—Goods in separate packages insured for sinmp sum—Partial loss excluded by memorandum—How far underwriters liable—Instances of—Several partial losses can be added together—When liable for total loss of part—Instances of—Expenses—Paid by underwriters independent of particular average—Small or petty average—Meaning of the term—Primage and average—Meaning of the terms.

Gentlemen,—Referring you to a former letter (Letter VIII. p. 111) on general average, as to the meaning of that term, and what are the subjects of it, I now proceed to the subject of particular average, and I beg you will attend to what is the proper meaning of that term.

All the writers upon the laws of insurance and shipping concur in holding, that this term, "particular average," is very improperly applied to those particular or partial losses, which may arise from damage to the goods or ship, and which are not subjects of a general average contribution (1 Park, 216; 2 Arn., 955), and which have, therefore, no connexion with an average properly so called. This term, "particular average," is used to denote, in general, any kind of damage or expense, short of a total loss, which applies to one part of the concern only, and which must be borne by the owner of that part of the concern alone (2 Arn., 956). As applied to the ship, this particular average, or partial loss, implies a damage sustained by the ship in the course of the voyage, from any of the perils enumerated in the policy; and, as applied to the cargo, means the damage which the goods may have received from storms, stranding, or shipwreck, without any fault of the master, although the whole, or the greater part, may arrive in port (1 Park, 218). The same expression is also applied, very erroneously, to denote a total loss of

part, which is quite distinct,—there being many cases in which the underwriters will be protected, by the memorandum at the foot of the policy, from all claims to partial losses, and yet, a total loss of a part can be recovered, where a particular average would not; and if the loss, however inconsiderable, arises from a general average, the underwriters are liable. Another distinction is, that many cases may arise, where there can be no claim for particular average, either because the goods were warranted free from particular average, or because they are warranted free from average under a certain per cent., and the damage does not amount to that per cent., yet the expenses incurred for the preservation of the same goods can be claimed (Ben., 424).

A simple or particular average is, therefore, strictly speaking, no average at all, but is only the damage incurred by or for one part of the concern, which that part alone must bear, although the expression is sufficiently understood, and is now received into familiar and ordinary use. The loss of an anchor or cable, the starting of a plank, are matters of simple or particular average, for which the ship alone is liable. Should a cargo of wine turn sour on the voyage, it would be a matter of simple average, which the goods alone must bear; and there might be a simple average, for which each would be severally liable, under a misfortune happening both to ship and cargo, at the same time, and from a common cause; as, if a waterspout should fall on a cargo of sugars, and a plank, from the same violence, should start at the same time (Lord Stowell, in the *Copenhagen*, 1 Rob., 293). These partial losses fall upon the owners of the property so damaged; and, should that damage arise from any of the perils insured against, the owners have to be indemnified by the underwriters.

Let us see, then, what are partial losses, or particular averages, in regard to the ship; and there are difficulties here, both as to the underwriters' liability, and as to the manner of ascertaining the amount of the loss. No doubt, when the amount of the loss can be sufficiently ascertained and known, there is little room for question as to the underwriters' liability; as, when by a peril within the policy, any part of the vessel or her apparelling, or of her stores, are damaged or destroyed, the underwriters are liable for the partial loss. For example, where a vessel was voluntarily set on fire, or burned, to prevent her falling into the hands of the enemy, this was held to be a loss within the policy,—Lord Ellenborough observing, "if the ship is destroyed by fire,"—this being one of the perils against which the underwriters undertake to indemnify the insured, —"it is of no consequence whether this is occasioned by a common accident, or by lightning, or by an act done in duty to the state;

nor can it make any difference whether the ship is thus destroyed by third persons, officers of the king, or by the captain and crew, acting with loyalty and good faith" (Gordon *v.* Remmington, 1 Camp., 123). In another case, the mate, being left in charge of the vessel, had lighted a fire in the cabin, and, in the evening, without leaving any person on board, he went on board another vessel, lying alongside; and at twelve o'clock at night, he looked out from the vessel he was in, and finding everything quiet on board his own ship, went to bed; but, in the morning, he was alarmed by fire, and his own vessel was soon consumed:—the underwriters were found liable, although it was admitted, that the loss arose from the negligence of the mate, in lighting a fire in the cabin, and not seeing that it was properly extinguished;—Justice Bayley remarking, "In this case the loss is occasioned by fire, against which the assured is protected by the terms of the policy; and, in our law at least, there is no authority which says, that the underwriters are not liable for a loss, the proximate cause of which is one of the enumerated risks, but the remote cause of which may be traced to the misconduct of the master and mariners" (Busk *v.* Ro. Ex. Ass. Co., 2 B. A., 73). And, upon the same principle, it has been held, that the underwriters were liable for a loss arising from a peril of the sea, although it arose remotely from the negligence of the master and mariners (Walker *v.* Maitland, 5 B. A., 171).

But, in ascertaining partial losses, the difficulty arises in discriminating losses which may have originated in the mistake, ignorance, or inattention of the master or mariners, from those which may have arisen directly from the perils of the sea, strictly so called. For the former, the underwriter is not liable, as the owner is bound to provide a competent and skilful master and crew, although, where these have been once provided, the negligent absence of all the crew, at the time of the loss, is no breach of the implied warranty, that the vessel shall be properly manned (Busk, *ut sup.*); and, therefore, where the loss arises immediately and directly,—not remotely and consequently,—from the fault of the master and crew, the loss must fall on the owner himself. Where, however, the loss has arisen truly from the perils of the sea, in ascertaining the amount of the damage, there must be distinguished,—between that which has been actually produced by the insufficiency of the vessel, or by the wear and tear of the voyage, which must be borne by the owner himself, —and that which can be truly ascribed to a peril of the sea, for which only the underwriter is liable,—as well as between damage from recent causes, and that which has arisen from previous hidden defects in the vessel.

In a former letter, I have treated of the seaworthiness of the

vessel; and you must recollect, that she must be sufficiently tight and strong, and well and properly found in everything necessary, for the voyage insured. She must be sufficiently strong, and provided with all the necessary apparelling and apparatus, which will enable her to encounter and overcome the ordinary difficulties that may be expected in the course, or according to the nature of, the voyage;—unless where the ship is insured by a *time* policy, and she is then abroad in the course of her voyage, in which case there is no implied condition, that the ship shall be seaworthy on the day when the policy is intended to attach (Gibson *v.* Small, 4 H. L. Ca., 353). But where, under ordinary circumstances, cables are broken or chafed, sails and yards carried away, or sails blown to pieces, in the ordinary service of the vessel, or any other damage sustained by the vessel or her apparelling, in the ordinary course of the voyage, this must be attributed to the tear and wear necessarily attending the common course of that voyage, which the owners must bear. But, where the loss is caused by an extraordinary event,—by the violence of the wind and waves,—by a storm or hurricane,—then the loss is to be made good by a particular average, and the underwriters on the ship are liable for it; as, where a vessel in a storm is dismasted, but the broken masts still remain attached to the vessel by the rigging, and the rigging has to be cut, in order to liberate the vessel from the wreck;—this accident arising from an extraordinary cause, must undoubtedly render the underwriters liable for the loss.

But, there are different degrees of seaworthiness, according to the age of the vessel insured; and every underwriter knows, that, although an old vessel may be perfectly seaworthy for the given voyage, her strength to encounter extraordinary sea risk may not be the same as that of a new vessel; and, therefore, he does not insure the old vessel at the same premium as the new, but the increased risk is counterbalanced by a higher premium, according to the age of the vessel. Whatever may be the age of the vessel, however, the insured does not require to disclose anything as to her seaworthiness, unless such disclosure be specially asked for by the underwriters. The general rule is, that the vessel must be seaworthy for the voyage insured, and this is expressly understood in all insurances. If the vessel, then, be seaworthy, whether she be old or new, and if she be lost from any extraordinary and unforeseen perils, arising during the voyage, the underwriter must pay for a total loss; and, in like manner, he must pay for partial damage from the same causes, whether the ship be old or new, although, in the same circumstances, a new ship may not have received damage to the extent of an old one; only, in the repairs of an old vessel, many articles

will necessarily be included, the expense of which was not owing to the effects of the last accident, and which mnst, therefore, in adjusting the partial average, be separated, as far as it can practically be so.

The most common instances in which particular averages occur are:—

1. Where a mast, cable, or other part of the vessel is carried away by a storm, and not parted with, cut away, or abandoned, in order to save the vessel,—this loss mnst fall npon the ship and freight, and, if insured, is to be indemnified by a particular average (2 Arn., 756; 1 Park, 283); becanse, althongh the tempest was the occasion of the loss, it was not a voluntary sacrifice, and was incnrred without any deliberation or intention on the part of the master and crew, with a view to save the ship and cargo; but if, in entering a port in a storm, the master cnt away a cable, in order to fasten the vessel to the pier, and prevent collision with another vessel, this is to be made good by a general average contribution (Berkley *v.* Presgrave, 1 East., 220).

2. When the masts, sails, and bowsprit have been damaged in a storm, or sndden sqnall, and, in order to repair these damages, the master puts into a port, the expense of these repairs forms a subject of particular average (Power *v.* Whitmore, 4 M. S., 141).

3. Although, in the ordinary case, damage sustained in avoiding a lee shore, falls under the ordinary tear and wear of the voyage, which the vessel onght to be strong enough to undergo, yet, where the damage arises from extraordinary circumstances, as by standing ont to sea with a press of sail in tempestuons weather, in order to avoid being driven on shore and stranded, or, by carrying a press of sail in order to avoid or escape from an enemy, this damage can be claimed as a particnlar average from the underwriter (Covington *v.* Roberts, 2 N. R., 378).

4. Where the vessel has stranded, or struck the ground, or strikes upon a rock, this is also particular average, nnless where there has been a voluntary stranding, for the general safety of the ship and cargo (2 Arn., 796).

5. Where, in scudding before the wind, in lying-to, or in a heavy cross sea, the pitching and rolling of the vessel carries away her masts, or damages her stancheons or upper works, or heavy seas burst the sails, or wash overboard the boats, properly fastened to ring-bolts on deck, or wash over articles then necessarily on deck,—these are all matters of particnlar average (Ben., 454; 2 Arn., 757).

6. Where, in a storm, or from some other violent canse, the vessel springs a leak, from which damage ensues, this falls nnder particnlar average, unless the leak arises from the ordinary working and strain-

ing of the vessel, or is owing to her age or insufficiency, or some other hidden defect (2 Arn., 757; 2 Mar., 546).

7. Where damage is done to the vessel, either by her running foul of another vessel, or being run foul of by another, without blame being attached to either side, the damage thereby sustained is also defrayed by a particular average; and where the collision has been occasioned by the negligence or misconduct of the other vessel, the underwriters on the vessel injured are liable for the loss, as particular average, only, and they can recover the damage from the owners of the vessel causing the injury (2 Mar., 495; Ben., 455).

In settling with the underwriters for partial losses on the ship, it is the practice, where the partial loss has been repaired, to deduct one-third from the expense, both of the material and labour expended in the repair; and this will shew you the necessity of preserving all the accounts and vouchers of any such expenditure, to produce to the underwriters, and establish your owner's claim.

Although you may not be so immediately connected with partial losses upon the goods as upon the ship, yet it is highly proper that you should have a distinct knowledge of the principles upon which such losses are indemnified by the underwriters, as there may be situations in which that knowledge can be of much avail to you, and may enable you to act with certainty and determination.

Where the cargo consists of several parcels of goods, and should any part of these parcels, capable of separate and distinct valuation, be totally lost, then the underwriters must pay to the owner the value of the part so lost. There is a total loss of these goods, which, as has been already remarked, can be recovered, in cases where a particular average could not; and the rules for ascertaining the value of the part so lost are as follow:—If the goods are valued in the policy at a slump sum, it is a proportion of that value, corresponding to the proportion which the goods lost bear to the whole goods insured; as, if one hundred hogsheads of sugar are insured at a certain sum, as the value of the whole, and ten hogsheads are totally lost, the sum which the underwriter has to pay, is a sum bearing the same proportion to the value insured, that ten bears to one hundred; —if the goods are not valued in the policy, the invoice price of the goods, and all charges, the commission, and the premiums of insurance, form the value upon which the loss must, in the same way, be calculated (1 Park, 222, 223). The price which the goods saved may bring at the port of destination,—the rise and fall in the market, —or the course of exchange, cannot enter into the calculation of the value (*Ibid.*, 225).

It is in the case of partial damage, however, by which the goods insured are rendered of less value, that a difficulty arises in ascer-

tainiug the proportion or extent of the damage. The leading principle is, that, where the goods are lessened in valnе by damage received from the perils of the sea, the underwriter must put the merchant in the same sitnation as he would have been, had they arrived sonud and free from damage, or, as if the loss or damage had not occurred. Where the goods are valued in the policy, the mode of ascertaining the extent of the damage, and the sum which the underwriter has to pay, has been thus forcibly illustrated by Lord Mansfield:—He takes the proportion of the difference "between sound and damaged at the port of delivery, and pays that proportion upon the value of the goods specified in the policy, and has no regard to the price in money, which either the sound or the damaged goods bore in the port of delivery. He says, the proportion of the difference is equally the same, whether the goods come to a rising or a falling market. For instance,—snppose the valne in the policy to be £30, the goods are damaged, bnt sell for £40; if they had been sound, they would have sold for £50. The difference, then, between the sonnd and the damaged is a fifth; conseqnently the insurer mnst pay a fifth of the prime cost or valne in the policy,—that is, £6. On the other hand, if they come to a losing market, and sell for £10, being damaged, bnt wonld have sold for £20, if sound, the difference is one half, the insurer mnst pay half the prime cost, or value in the policy,—that is £15."—(Lewis *v.* Rucker, 2 Burr., 1167).

It has been held, that the same rnle is to be applied in an open policy, and that the rnle for estimating any loss of goods insured by such a policy is,—to take the invoice price at the port of lading, together with the premium of insnrance, and commission, as the basis of the calculation, for the valne of the goods. And the rnle for estimating a partial loss, in the like case, is the same as npon a valued policy,—by taking the proportionate difference between the selling price of the sound, and that of the damaged goods, at the port of delivery, and applying that proportion, with reference to such estimated value at the loading port, to the damaged portion of the goods (Usher *v.* Noble; 12 East., 639).

If the goods are in separate packages, and insured for a slump snm, and, on the wreck of the vessel, some are totally lost, and the rest are saved, though damaged, the insured are entitled to recover as for a total loss, in regard to the former,—but, as to the latter, it is only a partial loss, from which, if the goods are one of the enumerated articles, the underwriters are protected by the memorandum, —of which immediately (Davy *v.* Milford; 15 East., 559).

It has been already noticed, that, by the memorandum at the foot of the policy, the underwriters are not liable for any partial loss happening to certain enumerated articles of a perishable nature,

which are liable to be damaged by their own inherent and natural corruption, and they are protected from partial losses on certain other articles, under five per cent., unless the average be general, or the ship be stranded. The meaning of the terms,—"unless the average be general, or the ship be stranded," was also explained; and that, when the vessel has been stranded, within the meaning of the policy, this destroys the effect of this exception, and the policy operates in its full force, so as to render the underwriters liable, if the vessel has been once stranded, for all subsequent losses, whether that loss was a consequence of the stranding or not. It only now remains to be seen, how far the underwriters are protected by the memorandum, from losses not arising from a general average, nor from a stranding.

Thus, where a vessel, with a cargo of corn, had met with a storm, and was obliged to run into the nearest port to refit, where a considerable expense of repairs was incurred; and, on arrival at her port of destination, the corn was found to be greatly damaged, to the extent of £56, 19s. 8d. per cent.;—it was held, that this loss not having arisen from a general average, nor from the vessel's being stranded, could not be recovered from the underwriters (Wilson *v.* Smith, 3 Burr. 1550). In another case, a vessel with a cargo of fruit from Lisbon to London, was captured and recaptured in the course of the voyage,—brought into Portsmouth, and afterwards arrived in London; but, by the capture and recapture, and consequent length of the voyage, the cargo had sustained a damage of £80 per cent.;—this was held to be a partial loss, for which the underwriter was not liable (M'Andrew *v.* Vaughan, 1 Mar. 223). And, in another case, a cargo of peas arrived at the port of destination, so much damaged as to be sold for three-fourths less than the freight; but it was held, that, as the goods mentioned in the memorandum had arrived at the market, the underwriters were not liable (Mason *v.* Skurry, 1 Mar. 218). So also, rice from Charleston to Liverpool, was insured, warranted free from particular average; the vessel with the rice arrived within the limits of the port of Liverpool; but, before she could be brought to her moorings, or be at all unloaded, she ran aground and was wrecked, and the whole cargo was taken out in craft, carried to the consignee at Liverpool, and sold, and produced, upon the *whole*, little more than would pay freight and salvage; but the rice did not produce sufficient to pay the freight:—it was held, that this was a particular average only, and, therefore, as to the rice, the underwriters were exempted by the warranty (Glennie *v.* Lond. Ass. Co., 2 M. S., 371).

But, should any of the articles upon which the underwriters are not liable for a partial loss, under 3 or 5 per cent., sustain several

partial losses, each individually less than 3 or 5 per cent., the whole of these partial losses can be added together, so as to make up the 3 or 5 per cent., or more, for which the underwriters are liable (Blackett *v.* Ro. Ex. Ass. Co., 2 Cr. J., 244).

Although the underwriters are exempted by the memorandum from particular average, on certain articles, yet they may be liable for a total loss of part of the goods insured, if they are packed in distinct packages, and are of a description to admit of being divided. As, in the case already referred to, flax was insured, packed in mats, in twenty-four separate packages, and warranted free of particular average; the vessel was wrecked, and no entire package was saved, but part of the flax floated ashore, or was got out of the wreck, wet and loose, to about one-sixth of the whole,—the nett proceeds of which amounted only to $2\frac{3}{4}$ per cent. on the sum insured:—it was held, that the insured could recover for a total loss of that part which was, in fact, totally lost, but not for the remainder, which existed in specie, though deteriorated (Davy, *ut sup.*). And, in a subsequent case, sugar, in hogsheads, was insured, warranted free of particular average;—the vessel grounded and bilged, and all the hogsheads were got on shore, with some sugar in each, but in general, not much, and nearly all damaged:—it was held, that, if any hogsheads had been lost, it would have been a total loss as to them, as in the preceding case; yet, as each hogshead had some sugar in it, this was only a partial loss, for which the underwriters were not liable (Hedburgh *v.* Pearson, 7 Taunt., 154). But, if the cargo,—as wheat,—is shipped and insured in bulk, warranted free from average, unless general, or the ship be stranded; and in tempestuous weather, during the voyage, a part of the wheat is pumped out, and lost,—there cannot be a total loss of a portion only of the cargo, and the insured cannot recover, as for a total loss of the part lost (Hills *v.* Loud. Ass. Co., 5 M. W., 569).

This term, "particular average," is not understood to comprehend the expenses laid out for saving or preserving the cargo,—as warehouse rent, which is held to be a particular charge on the cargo,—and the expense of reloading, which is a particular charge upon the freight (2 Arn., 962), and are always paid by the underwriters, independent of the particular average; and, consequently, these charges cannot be added to the particular averages, so as to increase the amount to the 3 or 5 per cent., for which the underwriter is liable (Ben., 472).

Besides this particular average, there is another kind, called small or petty average,—such as the expense of pilotage in conducting the vessel from one place to another,—towage,—lights,—anchorage,—beaconage, and such other incidental charges,—which

are generally borne, one-third by the ship, and two-thirds by the cargo; but these charges, if usual and customary in the course of the voyage, are never charged against the insurers, unless they have been incurred for some extraordinary purpose, or in order to relieve the ship and cargo from some immediate or threatened danger, when they are generally considered or included as general average, so as to charge the underwriters. The charges which fall under the head of small or petty average, are generally determined by the usage and custom of the particular trade or voyage (1 Park, 217, 2 Arn., 489).

It is a common condition, in bills of lading—"paying freight for the goods, at the agreed-on rate, with primage and average accustomed." As here used, these words signify a small payment or gratuity made by the merchant to the master, over and above the freight, for his personal care, trouble, and attention to the goods intrusted to him. This gratuity is commonly termed the master's hat-money, and is regulated according to the custom of different trades and voyages; and the master may maintain an action for it in his own name, independent of the claim for freight; unless, by the agreement between the owner and him, or by the agreement under which the goods have been shipped, this payment has been excluded (Abbot, 404).

In the next letter, I will notice another incident, which may occur before the termination of the voyage, and the delivery of the goods to the person for whom they are intended.—I am, &c.

LETTER XVI.

Stoppage *in transitu*—Party must be bankrupt or have failed—Or there must be strong grounds for suspecting his credit—Right not taken away by part price being paid, or bills granted—Master, common carrier—Goods in his hands may be stopped—Although vessel has been chartered by buyer—Or goods are delivered free on board—Unless vessel hired for a period of years—Goods placed in the hands of warehonseman or wharfinger—Whether as an intermediate stage of passage—Or as the final destination—Instances of—Where goods so placed, evidence of intention must be preserved—Instances of—Goods sold free on board—Instances of—Though vessel chartered wholly by buyer—Master still common carrier—Goods delivered by master after notice—Instances of—Delivery of part of entire cargo, delivery of whole—Instances of—When something remains to be done—Instances of—Delivery of part, as a part—Instances of—Goods detained by carrier for freight—Party entitled to stop—Consignee of goods on joint account—Alien enemy—Mutual dealings—No change in buyer's circumstances—No stoppage between principal and factor—Nor by a mere security—Nor by one holding a lien—Right not defeated by bills being granted—Nor part of price paid—Nor by carrier's detention—Nor by attachment—Manner of stopping—Should be in writing—Presenting bills of lading and demanding goods—Entering at custom-house—Must be given to master—Not to shipowner—Nor to bankrupt—Goods delivered by mistake—Stoppage under judicial authority—Whether stoppage puts an end to contract, or entitles seller to resume possession—Instances of—Possession of bill of lading by third party—Bill with conditions—Unconditional bill—Honest transfer of—Fraudulent transfer—Rule as to both instances—Mark placed upon goods—Anticipated possession—Factor pledging bill—Rights of owner—Instances of—General summary.

Gentlemen,—I have said in a previous letter, that your paramount duty was to deliver the goods shipped, at the port of destination, to the party entitled to them; but although they may have arrived safe at their port of destination, you may be prevented from delivering them in terms of the bills of lading or charter-party, by notice from the party in right of the goods, not so to deliver them. This is called stoppage *in transitu*, or stoppage during the voyage or passage; and, in treating of it, I will consider in what cases goods may be so stopped, and under what circumstances they are held to be still in the course of passage,—who is entitled so to stop them,—how this right is to be exercised,—and what prevents this right from being exercised.

So far as you are concerned, you will understand, that this right of stoppage can only be exercised by the party sending the goods, for securing the price of these goods, where the person, to whom they were to be delivered, has actually failed, or stopped payment, or is bankrupt, or where there are strong grounds for suspecting his credit, or that he will immediately fail or become bankrupt. This right is not taken away by bills having been granted for the price of the goods, but which bills turn out bad (Owenson *v.* Morse, 7 T. R., 64); nor by a bill having been accepted, for the price of the whole, or for

part of the price, and it being endorsed to a third party (Feize *v.* Wray, 3 East., 93. Edwards *v.* Brewer, 2 M. W., 375); nor although a part of the price has been paid by the person to whom the goods were to be delivered (Hodgson *v.* Loy, 7 T. R., 440).

You should never lose sight of this principle,—that you are a common carrier; and, therefore, while goods are in your possession, as such, the party in right of these goods, is entitled to prevent the intended delivery of them. This may be considered the simplest case of a stoppage of goods during the passage; and, therefore, while the goods are in that state, you are considered as a middleman between the parties, and as entrusted with the custody of the goods, for the protection, on the one hand, of the seller's claims of detention over the goods, until he be satisfied for the price, and on the other hand, of the purchaser's right of property in them: and neither will this character of middleman be altered, nor the seller's right to stop be prevented, although the buyer charter a vessel, and send her out for the goods (Clay *v.* Harrison, 10 B. C., 99), or although the goods have been sold free on board the vessel (Ruck *v.* Hatfield, 5 B. A., 632). But, where a vessel had been chartered for three years, and a receipt for the goods had been given in the name of the charterers, it was held, that this was such a delivery to them as defeated the seller's right to stop (Fowler *v.* M'Taggart, 7 T. R., 442).

While the goods remain in your possession, and under your control, there can be no doubt that they are still in the course of the passage, and can be stopped by the unpaid shipper; and, therefore, in such a case, there is little room for any dispute; but, where the goods have been placed by you in the hands of a third party,—as a warehouseman or wharfinger,—questions of difficulty may arise,—whether, when the goods were so placed, this was done merely as an intermediate stage in the course of the voyage, and with a view to their farther conveyance; or whether, when so placed, they had so far arrived at their destination, as to await the orders of the buyer for their further progress. In the former, the goods are still held to be in the course of passage, and can be stopped; but, in the latter, the goods are held to have arrived at their destination, and to be in the possession, either actual or constructive, of the buyer or his agent. A few instances will make this plain.

A merchant in this country sold goods to a firm in Paris, and, by the direction of their agent here, the goods were sent to the house of a packer in London, on 3d September; the agent, having a general power to send the goods to Paris, to Holland, or to Germany, unpacked some of the goods in the house of the packer, and sent some of them off, and the remainder were repacked; the bankruptcy of the company in Paris was announced on the 7th September, and the

seller tendering the charges, demanded his goods; but it was held, that the goods having been received by the packer for the agent of the company, and he holding a general authority to send them to such market as he thought fit, these goods were delivered, and, therefore, that the delivery was complete, so as to deprive the seller of his right to stop *in transitu* (Leeds *v.* Wright, 2 B. P., 320). In another case, traders in London were in the practice, for several years, of sending orders to Baldwin for goods, to be forwarded to a company at Hull, to be shipped for Hamburgh; and, when the goods arrived at Hull, the trader sent orders to the company there, where and to whom to send the goods at Hamburgh; eighteen bales of cotton twist were, by the directions of the traders, sent in packages, with a certain mark, "per order, and to be forwarded to the company at Hull, to be shipped for Hamburgh, as usual;"—the traders failed in July, and Baldwin went to Hull, and demanded the goods; the traders called a meeting of their creditors, and it was resolved to give up the goods, which was communicated to Baldwin on 29th July; no act of bankruptcy took place until September, when the assignees claimed the goods; and, when Baldwin stopped the goods, in July, four bales were actually shipped for Hamburgh, but were returned to the company's warehouse at Hull, and the whole were given up to Baldwin, on an indemnity:—it was held, that the goods had so far gotten to the end of their journey, that they waited for new orders from the purchasers to put them again in motion,—to communicate to them another substantive destination, and, without such order, they would have remained stationary; and, therefore, that the warehouse of the company at Hull must be considered as the warehouse of the traders, the purchasers, so as to cut off the seller's right to stop them (Dixon *v.* Baldwin, 5 East., 175). Again,—Lange, of London, had been in the habit of exporting goods to the continent, and ordered six bales of twist for that purpose, which were delivered to the carriers, with an address to Lange, in London; he had no warehouse of his own in London, but goods sent to him remained at the waggon-office of the carriers, until removed by his shipping agents; the bales in question arrived at the carrier's waggon-office, and notice was sent to Lange's clerk, of their arrival, who saw the bales, and said he would give orders to the shipping agent to go for them as usual; but, next day, he told the warehouseman not to let them go without orders; the day after, the agent of the consignor or seller gave notice to deliver the goods to Lubman and Co., which was done accordingly, and, a few days before, Lange had committed an act of bankruptcy; and, in an action by his assignees, it was held, that if a man be in the habit of using the warehouse of a wharfinger as his own, and make it the repository of his goods, and

dispose of them there, the journey is at an end when the goods arrive at such warehouse; and, therefore, as the bankrupt was in the habit of leaving goods at the waggon-office, until he gave orders for their shipment or removal, their arrival at the waggon-office put an end to their journey, as between buyer and seller, and deprived the latter of his right to stop them (Rowe *v.* Pickford, 8 Taunt., 83). And, in another case, five hundred pieces of printed calico were bought by individuals for a foreign house, to be sent to Lisbon; these individuals were packers and warehousemen, as well as the general agents for the buyers; and, the buyers having failed, the goods were stopped in their warehouse:—it was held, that as packers or warehousemen, the goods delivered to them, to be sent to Lisbon, were still in the course of passage, and might be stopped, and that the character of agents made no difference;—that it was a general rule, that where goods are sold, to be sent to a particular destination, named by the purchaser, the right of the seller to stop them continues until they arrive at their destination;—and that here, the place named by the buyer, was Lisbon, and not the party's warehouse (Coates *v.* Railton, 6 B. C., 422).

Where, therefore, the goods are placed in the hands of a third party, as wharfinger or warehouseman, evidence of the intention with which they are so placed or received, must be preserved and given: as, in the case where goods arrived at a wharf, at which the master was in the habit of trading; the buyer was from home, but his clerk told the master, he had better land the goods on the buyer's account; the goods were accordingly landed at the wharf, and entered in the wharfinger's books with "freight and charges" entered opposite, and not in the name of any party;—the buyer having become insolvent, they were stopped by the seller;—and it was held, that the *transitus* was not determined (Edwards *v.* Brewer, 2 M. W., 375). And, where the goods were landed at the warehouse of a wharfinger, which the buyer used as his own, for the purpose of stowing such goods, and keeping them until carried away to his customers, in his own carts; but, though they were landed by the buyer's permission, he did not intend to take possession of them as owner, although his intention had not been communicated to the wharfinger:—it was held, that the goods were still in a state of passage, while in the hands of the wharfinger, and could, therefore, be effectually stopped by the seller (James *v.* Griffin, 2 M. W., 623).

Where goods are sold, to be delivered free on board a vessel, named by the buyer, the seller can preserve his right to stop the goods while in the course of the passage,—the buyer having failed, and the price being unpaid,—by taking a receipt for them, from the

master or other person in charge, in his own name;—as, where goods were bargained for, to be delivered free on board a certain ship, and the seller sent them to the ship with a written order addressed to the commanding officer on board,—"receive the undermentioned goods for and on account of" the sellers; a receipt was granted bearing to have "received on board, &c., the undermentioned sugars for Hamburgh, for, and on account of" the sellers; the purchasers failed, and the lighterman demanded the goods, on the part of the sellers, producing the receipt, and tendering the freight and charges;—the buyers, in the meantime, had sold the goods to a third person, and to him, the shipmaster had inadvertently granted a bill of lading in his own name, without having received the receipt;—but, in an action by the sellers against the shipmaster, for delivery of the goods, they were found entitled to them,—the jury considering, that the receipt kept full control over the goods, till it was given up, and that nothing had deprived the sellers of their right to stop the goods *in transitu* (Craven *v.* Ryder, 6 Taunt., 433). And, although the master refuse to sign a receipt for the goods, as shipped in the name of the seller, and he afterwards sign and deliver a bill of lading to the buyer, who becomes insolvent before the vessel sails,—the seller still retains his right to stop the goods, and he has an action against the master for redelivery of them to him:—as, where rum was sold free on board, and was shipped on board a vessel, and a receipt, acknowledging the goods to be shipped by the seller, was tendered to the mate, who refused to sign it; thereafter, the master signed bills of lading, deliverable to merchants in Hamburgh, correspondents of the buyers, who, in a few days afterwards, stopped payment; the seller then sent to the master, requiring a formal receipt, that he had received the rum on the seller's account, which was refused:—and in an action against the master for delivery of the rum to the seller, he was held entitled to it, on the ground that the *transitus* was not at an end by this delivery on board, and that it was the master's duty to sign the receipt, and not the bills of lading, till the receipt had been delivered by the sellers to the buyers (Ruck *v.* Hatfield, 5 B. A., 632).

In general, the master of the vessel, even though it be chartered wholly by the buyer or consignee, is held to be in the same situation as a common carrier; and, therefore, his possession of the goods is only the possession of a carrier,—the contract being with him for the carriage of the goods; and until their arrival and delivery, the goods are on their passage and transit from the seller to the buyer, or from the consignor to the consignees.

If, after timely notice by the seller, to stop the goods, the carrier, by mistake, delivers them to the buyer, the seller has still his action,

after such notice, against the person to whom they have been so improperly delivered, for their redelivery, although, on his bankruptcy, the goods may have passed into the hands of his assignees or trustees;—as, where a seller delivered goods to a carrier, to be carried to the buyer, but he, seeing good cause, immediately afterwards, to prevent delivery, stopped the goods, while on the journey;—the carrier, however, by a mistake of his clerk, delivered the goods to the buyer, who unpacked them and sold part; and, some weeks afterwards, he became bankrupt, and the unsold goods were taken possession of by the assignees:—but in an action against these assignees, the seller was found entitled to recover the goods (Bothlingk *v.* Inglis, 3 East., 381).

It is the rule in England, that delivery of part of an entire cargo to the buyer or consignee, is a delivery of the whole, so as to prevent the seller or consignor from exercising his right to stop it, as still in the course of passage (Abbot, 525);—as, where a cargo of wheat was shipped on bills of lading, delivered to the buyers, and by them sold to a third party, whose agents, on the arrival of the vessel, entered the goods in their own name at the custom-house, and took delivery of eight hundred bushels on his account; but the original buyers having become bankrupt, the original seller gave notice to the shipmaster to stop the delivery:—it was held, however, that the *transitus* was ended by the delivery of the eight hundred bushels, which must be taken to be a delivery of the whole,—there appearing no intention, either previous to, or at the time of delivery, to separate part of the cargo from the rest (Sluby *v.* Hayward, 2 H. Black., 504). And where a number of bales of bacon, lying at a wharf, were sold for an entire sum, and a delivery order given to the wharfinger, and the buyer weighed over the whole,—took away twenty-five bales,—and left the remainder with the wharfinger; he then failed, and the seller ordered the wharfinger not to deliver;—but it was held, that, as the buyer had weighed over the whole, this was taking possession of the whole, and the seller had no right to stop what remained with the wharfinger (Hammond *v.* Anderson, 1 B. P., 71).

But where anything remains to be done between the buyer and the seller,—as counting, weighing, or measuring,—before complete delivery can be made, or where a part is separated from the whole, and delivered as a part, and is not intended as a delivery of the whole, the seller is not deprived of his right to stop;—as was held in the following instances:—

An individual sold all his starch, lying in a certain warehouse, at a certain sum per cent., to be afterwards weighed, in order to ascertain the amount of the price at that rate; the seller gave the buyer

a note to the warehouse keeper, to weigh and deliver five hundred and forty papers of starch, which was done, and the starch to that extent removed; a considerable quantity remained in the warehouse unweighed, when the buyer failed:—and it was held, that the seller was entitled to this quantity, on the ground that the weighing, which was indispensably necessary to precede the delivery of the goods, and to ascertain the price to be paid for them, had not been performed at the time when the action was brought (Hanson *v.* Meyer, 6 East., 614). So also, where fifty tuns of Greenland oil, lying at a wharfinger's, were sold at so much per tun, to be paid by an acceptance at four months; and an order was given by the sellers to the buyers, addressed to the wharfinger, to deliver to the latter the fifty tuns out of their ninety tuns of Greenland oil; but nothing had been done on this order, when the buyers failed, and the order was countermanded. Before Greenland oil is delivered, the practice is, to have the casks searched by the seller's cooper,—the broker for both parties taking a note of the foot-dirt and water in each cask, and the casks are then filled up by the seller, and delivered in a complete state; but, in this case, nothing of all these had been done:—it was held, that these were material acts to be done by the seller before delivery, and that, therefore, before the oil was measured out, and these things done, the order for delivery had been effectually countermanded (Wallace *v.* Breeds, 13 East., 522). And, in another case, a quantity of rosin, in the warehouse of the seller, was sold, and the price paid by the buyers,—it being to remain in the seller's warehouse; and, while in that state, the buyers sold it to a third party, to whom they gave a delivery order on the original sellers, which was lodged with them, and they were ready to weigh and deliver; but the second purchaser never attended;—he stopped payment, and the original buyers countermanded the delivery order:—it was held, that this countermand was in time, because, until everything was finished in weighing, &c., the delivery was not complete, although, if the rosin had been weighed, a delivery order, with notice, though without entry in the holder's books, would have completed the transfer (Withers *v.* Lyp., 4 Camp., 237).

In the same manner, if a part of the whole is separated and delivered to the buyers, as a part merely, and not as the commencement of a delivery of the whole, this does not deprive the seller of his right to retain, or to stop the remainder. As, where hay was sold, and a bill granted for the price;—the buyer asked leave to cut and carry away part of the hay, which he was allowed to do, but afterwards he was forbidden to take away the rest; the bill was dishonoured, and the person who sold the hay, and to whom the bill had been granted, failed, and the owner refused to deliver the

hay to the purchaser: and it was held, that the part delivery not being in execution of an intention to deliver, or to take the whole, but being specifically under an allowance to take a part, did not divest the owner of his lien or right to retain the remainder (Bunny *v.* Pointz, 4 B. Ad., 568). And, where a quantity of rum was sold, bonded in the seller's name in his own vaults, and the purchase was completed, the price being paid; the buyer sold forty-six puncheons of his purchase to a second, who accepted bills for the price, but received no delivery order, except for two puncheons; the second buyer sold twenty-six puncheons of his purchase to a third, who granted his acceptance for them; and his cooper, by leave of the original seller, coopered, and gauged, and marked them with the initials of the third buyer; the second buyer sold the other eighteen puncheons to two individuals, who settled by cash, brandy, and a bill, and three of the puncheons were delivered on separate delivery orders;—the second buyer having dishonoured his bills to the first buyer, the latter gave notice to the original seller not to deliver the rum: and, it was held, that, as there was no delivery order to the second buyer, the possession was not passed to him, and that the delivery of the two puncheons did not complete the delivery; that the third purchasers had not, from the second, the evidence of a complete transfer, so as to make their case better than his; that the coopering, gauging, and marking of initials were not sufficient to complete the transfer; and that delivery of a part is no delivery of the whole, unless where it is intended as a delivery of the whole,—not where it is intended to separate that part from the whole (Dixon *v.* Yates, 5 B. Ad., 313).

The distinction between the two kinds of delivery is well illustrated in the following case:—Where goods were forwarded in bales, by ship to London, deliverable to B. & Co., or their assigns, who were factors, for sale, and were landed at a wharfinger's wharf, to whom B. & Co. gave orders to "weigh and deliver" the goods to M., who had contracted with B. & Co. for the purchase of them; and they were accordingly weighed, and an account of weights sent to B. & Co., *who made out invoices to M.*, and he resold several bales of the goods, which were delivered by the wharfinger, upon his order, to the purchasers; the rest remained on the wharfinger's wharf until they were stopped by B. & Co., as the unpaid vendors; *they were never transferred in the wharfinger's books from the names of B. & Co. to that of M., nor was any warehouse rent paid by him:* —and it was held, that B. & Co.'s right of stoppage was not determined by the part delivery to M.'s orders (Tanner *v.* Scovell, 14 M. W., 28).

But, where a water carrier landed part of the goods at the wharf

of the consignee, who was then insolvent, and had absconded, but reshipped it, and took the whole to his own premises, in order to secure the freight and carriage;—this was held not a complete delivery of part of an entire cargo, so as to end the passage as to the whole, the goods being only in the course of delivery, and neither possession having been taken of the goods, nor these weighed, so as to ascertain the carrier's freight,—and until that was ascertained and paid, or tendered, he had a special property over all the cargo for his security; and to divest the right to stop, there must be such a delivery as to divest the carrier's lien (Crawshey *v.* Eades, 1 B. C., 181).

Let us next see, who is the party entitled to exercise this right of stopping goods, or preventing the delivery of them; and I need hardly mention, that the simplest case in which this can take place, is, where an unpaid seller or consignor has sent goods to a buyer or consignee on credit, and the latter fails before the arrival and delivery of the goods. But this right is extended to every person who, in an equitable view, can be considered as a seller or consignor:—As, where a person abroad, in consequence of orders sent by a merchant in this country, purchased goods on his own credit from others, whose names were unknown to the merchant, and he charged the merchant a commission,—shipping the goods on account and risk of the merchant, and drawing bills on him for the price and commission;—the merchant failed before the arrival of the ship, and delivered up the bills of lading to an agent for the person abroad, upon which the goods also were delivered to the agent:—in a question with the assignees of the merchant, for the recovery of the goods, it was held, that the person abroad was in reality the seller,—he being truly the buyer of the goods, and selling them to the merchant; and that, therefore, he was entitled to stop them (Feise *v.* Wray, 3 East., 93). So also, the consignor of goods for sale, on joint account of himself and the consignees, is entitled to stop them, on the failure of the latter (Newson *v.* Thornton, 6 East., 17).

But, where a consignor indorses and transmits the bills of lading, and sends the goods to his correspondent, with whom he has mutual dealings, in pursuance of an agreement, and in trust to pay certain acceptances, given on the faith of the consignment,—he cannot countermand delivery, and take back the goods, while the trust and consignment were unsatisfied,—nor can the master redeliver the goods to him (Haille *v.* Smith, 1 B. P., 563). Where, also, goods were sent on account, and at the risk of the buyer, with an invoice and bill of lading, and bills were drawn, at the date agreed on, for the price, which were sent for acceptance:—it was held, that the

seller could not stop them and insist upon immediate payment,—the buyer being willing to accept the bills, and there being no alteration in his circumstances (Walley *v.* Montgomery, 3 East., 585).

There is also no place for the exercise of this right of stoppage between a principal and factor, upon the ground that the principal is never divested of the property in the goods; and, therefore, it has been held, that where the transaction between the parties, with respect to the consignments, was as between principal and factor, and not as between seller and buyer, the factor could have no property in the cargo, and the right of stoppage *in transitu* was out of the question,—that never occurring but between buyer and seller (Kinloch *v.* Craig, 3 T. R., 783).

But a person who is a mere security for the payment of the price by the buyer,—by accepting bills drawn for the price by the seller,—is not in the situation of the seller or consignor, although the bills have been sent through his hands to the buyer (Siffken *v.* Wray, 6 East., 371). And a person who has merely a lien on the goods, or a right of retaining them, without any right of property in them, cannot stop the goods, on the purchaser becoming bankrupt before their arrival; and, therefore, a fuller who had fulled cloth and forwarded it to his employer,—although, by the usage of the trade, he had a lien over the cloth for his general balance,—could not countermand the delivery, as being still on the passage, he, by parting with the possession, having lost his lien, and could not stop them as between seller and purchaser (Sweet *v.* Pym, 1 East., 4).

I have mentioned in the commencement of this letter, that the right of stoppage is not taken away by a bill having been accepted for the whole or part of the price, which turns out bad,—or although it be indorsed to a third party,—nor although part of the price has been paid; neither will it be defeated by a land carrier claiming retention of the goods, as a security for a general balance due to him by the party to whom they should have been delivered; and the person stopping is entitled to the goods upon paying the carriage due for them only (Oppenheim *v.* Russell, 3 B. P., 43). Neither can it be defeated by any process of attachment used against them by a creditor of the purchaser, the seller's power of stopping the goods being the older and preferable lien (Smith *v.* Goss, 1 Camp., 282); nor by any claim or pretence of a lien by the purchaser's agent (Nicholl *v.* Le Fevre, 2 Bing. N. C., 83).

As to the manner in which goods may be stopped, while in course of passage, the law does not point out any special form for doing so, nor does it require any special solemnity for that purpose. It may be mentioned, however, that the mere insolvency or bankruptcy of

the buyers or consignees is not itself equivalent to a stoppage, as his shop or warehouse may, notwithstanding, continue open, and his trustee or assignees in bankruptcy may receive the goods (Scott *v.* Petit, 3 B. P., 469). But, in general, notice to the master or carrier, either verbally or in writing, not to deliver the goods to the buyer or consignee, is snfficient; and, when that notice is given, it is the duty of the master to attend to it. It is proper, however, in order to fix the precise date of the stoppage, that a regular notice to do so should be given to the master in writing,—as by letter, for instance; or the seller or his agent may present to the master, one of the bills of lading, and demand delivery of the goods, which will complete the stoppage; or the seller can enter the goods at the custom-house, for the purpose of paying the duties on them, which is an effectual stoppage.

But, in order that this notice be effectual, it is necessary that it be given to the master himself, or to the person who has the immediate charge and custody of the goods; and, therefore, it has been held, that, to give a notice to stop from Quebec, to a shipowner in Montrose, while a cargo was on the voyage, to be delivered at Fleetwood, in Lancashire, was not sufficient,—although the owner sent a letter to await the master's arrival in Fleetwood, directing him to deliver the cargo to the agents of the seller (Whitehead *v.* Anderson, 9 M. W., 518); and an intimation given to the bankrupt himself, or to his creditors, that the seller intended to stop delivery of the goods, or was in the course of obtaining a judicial warrant for that purpose, will not be sufficient.

If, after this notice to stop has been properly and effectually given, the master should deliver the goods to the buyer or his creditors, or should they be delivered through mistake, he will be liable to an action for delivery of the goods to the seller, or, at all events, he will be liable to him for the loss he may sustain in consequence of the improper delivery.

When this stoppage is made, not by the seller himself, nor by a person holding a bill of lading, or other express legal authority from him, but only by his ordinary and usual agent, interposing for the seller's benefit, the stoppage should be made under judicial authority, which, when required for the protection of the foreign merchant, will generally be granted, under proper precautions.

It has not been determined, whether the act of stopping *in transitu* has the effect of putting an end altogether to the contract for the sale or consignment of the goods, or merely entitles the seller or consignor to resume possession of the goods for his own security; but, at all events, he can pursue for the price, if, on payment being tendered, he is ready to deliver the goods (Kymer *v.* Sowercrop, 1

Camp., 109). The buyer, or those in his place, may still obtain possession of the goods, upon paying or tendering the price, if already payable; or, if the price is not yet payable, on granting good bills for it, at the stipulated credit, or on finding security for payment of the price when it falls due;—but should none of these be done, it has been held, that the seller may resell the goods (Abbot, 317).

Having thus seen under what circumstances goods can be stopped during their passage,—who are the parties entitled to stop them,—and what are the effects of this stoppage,—let us now see, what will prevent the seller or consignor from exercising this right.

I need not again go over the instances, in which the goods have been held to be actually delivered to the buyer or consignee, and in which this right of stoppage could not, as a matter of course, be exercised. You will readily bear in mind, that where there has been a delivery of the goods, either actual, or what amounts in law to an actual delivery, there can be no stoppage; and, therefore, under this head, I will only consider when possession of the bill of lading by a third party, puts an end to this right.

You will see from the bills of lading, that you are bound to deliver the goods, either to a person named *or his assigns*, or to order *or assigns;* and although the person to whom the goods are to be delivered, may be in possession of a bill of lading, expressed in these or similar terms, this does not prevent the seller or consignor stopping the goods as against that person or his creditors,—the price not being paid. But, as bills of lading are negotiable documents, and can be indorsed or transferred to other parties, it is often a very nice question,—how far the possession of an indorsed bill of lading entitles the holder of it to demand possession of the goods, and deprives the seller or consignor of his right of stoppage. Where the bill of lading contains any particular conditions or restrictions, or such are mentioned in the indorsement, the party taking the bills of lading can be in no better situation than the original party, unless he has evidence that the condition has been satisfied, or the restrictions removed. But, in the common case, an unconditional bill of lading is negotiable the same as a bill of exchange or promissory note; and, therefore, when the goods are in the course of their voyage, the person to whom the bills of lading have been sent, can dispose of them the same as if the goods had arrived, and the property of the goods is transferred, by the indorsement and delivery of the bills of lading, to the person who has given a valuable consideration for such indorsement, so as to deprive the original owner of his right of stoppage. In the case, then, of a fair and honest sale or purchase of the bills of lading, and indorsement and delivery of them, there is no room for doubt, even although bills have only been

accepted for the price of the goods, and these are not yet due,—provided the person who has accepted them either is in good circumstances, or is not insolvent, or in doubtful circumstances (Cumming *v.* Brown, 9 East., 506). And now, by § 2 of the 18 and 19 Vict., c. 111, it is enacted, that although by the first section every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property of the goods therein mentioned shall pass, upon or by reason of that consignment or indorsement, has transferred to and vested in him all the rights, and is subject to all the liabilities, in respect of these goods, as if the contract in the bill of lading had been made with himself, yet that nothing therein contained shall prejudice or affect any right of stoppage *in transitu*, by reason or in consequence of his being such consignee or indorsee, or of his receipt of the goods by reason or in consequence of such consignment or indorsement.

But there may be numerous cases in which the bills of lading may be indorsed and delivered, not in the fair way of trade, but for some fraudulent purpose, and with the view of defeating this right of the original owner. As, where the bill of lading has been indorsed upon some confidential understanding, and the party to whom it is indorsed is in the knowledge that the person doing so is in insolvent circumstances, or that the price has not been paid, and that there is no likelihood of its being paid, or that no bill has been accepted for the price, or, though a bill has been accepted, that it is not likely to be paid. In such cases, the person taking the bill of lading is entitled to no privilege; he stands in the same position as the original holder, and his interposition being, under these circumstances, in fraud of the right of the original seller or consignor, will not be available to defeat it. On the one hand, when the indorsement is honestly and fairly taken, for a valuable consideration, without notice of any circumstances which would render the bill of lading not fairly and honestly assignable,—and although the indorsee knows that a bill has been accepted for the price, and is not yet payable, but he has no reason to apprehend that the person accepting it is likely to fail, and not pay the money in due course,—the original owner is not entitled to prevent delivery of the goods. But, on the other hand, if the party has assisted in contravening the actual terms of the bargain or sale on the part of the original owner, or has reasonable expectations arising out of them, or has rights connected therewith,—as where he knows that the buyer or consignee is in insolvent circumstances, or that no bill has been accepted for the price, or that being accepted, it is not likely to be paid,—then he stands in the same situation as the party with whom he deals, and the original owner is entitled to

prevent delivery of the goods (Abbot, 535). Where, therefore, the party taking the indorsement to the bill of lading, has notice of the insolvency of the party from whom he receives the bill, the right of stoppage is not taken away (Virtue *v.* Jewell, 4 Camp., 315). Where, also, the party taking the bill of lading makes himself a partner in the transaction with the original buyer or consignee,—as by engaging to pay for the goods and divide the profits,—he is not entitled to prevent the exercise of the right of stoppage (Solomons *v.* Nisson, 2 T. R., 674). And where the bill of lading was specially indorsed, "deliverable to A. B. if he should accept and pay the accompanying" draft; if not, to the holder of the draft; A. B. accepted the draft, and then indorsed the bill of lading to another person for a valuable consideration, but he did not pay the draft when it became due:—it was held, that the conditional indorsement made it incumbent on the purchaser to inquire whether the condition had been actually performed,—and that, not having done so, he had acquired no property in the goods (Barrow *v.* Coles, 3 Camp., 92).

If, after the termination of the voyage, the buyer or consignee place his mark on the goods, this is held to be virtually taking possession of them by him, so as to exclude the right to stop them (Ellis *v.* Hunt, 3 T. R., 464); but this must be done at the natural termination of the journey; and if done at any time before that, or even although the buyer or consignee obtain possession of them previous to such termination, his doing so will not deprive the seller or consignor of his right (Holst *v.* Pownall, 1 Esp., 242). Where the goods are placed in the Queen's warehouse until the duties are paid, during which time the consignee becomes bankrupt, the goods can be effectually stopped (Northey *v.* Field, 2 Esp., 613).

In the case of goods consigned to a factor, and the bill of lading transmitted to him, he can obtain a loan or advance of money, upon the pledge or security of the bill of lading, if honestly and fairly made, which will also cover any further or continuing advances in respect thereof, although the person making the advances, and claiming the pledge or lien, has notice that the party with whom he contracts is only an agent (5 & 6 V., c. 39, § 1). The securities for such loans may be exchanged (5 & 6 V., c. 39, § 2); but only such loans, advances, and exchanges are protected by the statute, as are made honestly and fairly, and without notice that the agent obtaining the loan in advance, has no authority to do so, or is acting in bad faith in respect thereof, against the owner; and the statute will not extend to or protect a lien or pledge for a previous debt, owing from the agent to the person receiving the lien or pledge; nor to authorise any agent entrusted with bills of lading, in deviating from

the express orders or authority received from the owner (5 & 6 V., c. 39, § 3). But the owner is entitled to redeem the pledge or lien (5 & 6 V., c. 39, § 7), and this pledge does not *absolutely* defeat the owner's right to stop the goods,—for, although the legal right to possession of the goods passes to the person advancing the money, yet the owner has still an interest in the goods, and can claim any balance that may remain after repaying the money advanced; and should the agent have pledged any goods of his own, along with those in the bill of lading, the owner of these latter goods is entitled to have the other goods sold, and the proceeds applied to the claim, before his own goods are applied to that purpose. As, when a bill of lading, and also goods to a considerable value were pledged for advances to the consignee, but, on his bankruptcy, the master of the ship claimed to stop the goods in the bill of lading as *in transitu;* and it was held, that the consignor of these goods had a right to insist upon the proceeds of the goods belonging to the consignee, being applied to the discharge of the lien, which the party making the advances had; and as they proved sufficient to satisfy it, that he had a right to receive the entire proceeds of his own goods (In the matter of Westzinthus, 5 B. Ad., 817).

I have thus given you a brief outline of the doctrine of stoppage *in transitu*, which has much engaged the attention of courts of law, and which will often arise in practice, and of which, therefore, it is of great importance that you should have such a knowledge as will enable you to act with safety, in the different circumstances in which that right may be exercised. Let me here present you with a short summary of the doctrine:—this stoppage can only be made by an unpaid seller or consignor, or by his agent, or other person in his right, or by a person who, in an equitable view, is to be held as seller or consignor, and where the buyer or consignee is bankrupt or insolvent, or, at least, changed in his circumstances; nor is this right taken away by part of the price being paid, or by bills being granted for it. The notice of this stoppage may be given either by word or in writing, although it ought to be in writing, and it can also be done by judicial authority; but it must be given to the ship-master, and not to the shipowner, nor to the person to whom the goods are to be delivered; and it must be given while the goods are in the course of their voyage or journey, and before they have come into the actual possession of the party who was to receive them, or before that party has done any act in relation to the goods, which is held in law equivalent to his taking possession of them.

I will immediately afterwards consider in regard to delivering the goods which have been so stopped, or landing them from the vessel at the termination of the voyage; but I would previously recom-

mend to your serious attention, what has been said in this letter as to the law of stoppage *in transitu*.—I am, &c.

LETTER XVII.

Port of destination—Duty in taking a pilot—Signals made for pilots—When no pilot can be got or be had—Where vessel has to perform quarantine—Port of discharge in hands of enemy—Intercourse with port of destination prohibited—Port of destination blockaded—If known to master or owners—Knowledge not to be presumed—Instance of—Notoriety of blockade—Instances of—Known before sailing—When voyage not illegal—Instances of—No excuse for not sailing—Instances of—Breach of blockade—Instances of—Does not discharge from performance of contract—Nor put an end to contract—Master bound to have on board all papers and documents necessary—Bill of health—Licences—General rule as to—When pratique must be received—Instances of—Vessel must be moored or anchored safely—Delivery of cargo—Must be in terms of bills of lading—In good condition—Responsibility of master—Cargo of grain—To whom cargo to be delivered—Must adhere strictly to engagement with shippers—Only to be delivered on production of indorsed bills of lading—Instances of wrong delivery—Delivery to party presenting bill of lading indorsed in full or blank—Bills of lading under conditions—Instances of—Bill of lading to order of consignee or purchaser—May not be entitled to receive possession—Instances of—Bill of lading to agent of consignor—In hands of onerous indorser—When goods consigned for special purpose—Instances of—In cases of doubt how master should deliver—Protest by master—Use of—Lay-days—When they commence—Particular place mentioned, or left to selection of master—Instances of—Protest on expiry of lay-days—Demurrage—Rate of—When not due—What no defence to claim of—Goods in general ship not got out—Rule as to demurrage—When action for can be brought by master.

GENTLEMEN,—I may now assume that the voyage is drawing to a conclusion, and that you are approaching your port of destination. Let us see, then, what is your duty in entering that port.

In a previous letter, I have treated of the subject of pilots, and have given you the laws and regulations relative to their employment, although these relate, more particularly, to the employment of pilots on the coasts, and at the ports of this country. But you will recollect the general rule, that, during the voyage, and, more particularly, in entering the port of destination, you must take a pilot on board, when the vessel is in the limits of a pilots' establishment,—or where, either by usage or the laws of the country, a pilot is required (Law *v.* Hollingworth, 7 T. R. 160), unless you be possessed of a pilotage certificate for the limits, in terms of § 340 or 355 of the Merchant Shipping Act. This taking a pilot is a duty which you owe, not only to your owners, but also to the shippers and insurers, and which, for their interests, as well as for the safety of yourself and crew, you ought anxiously to discharge,—not only by taking on board a pilot at the place where, during the course of the voyage, a pilot is required by law or custom to be taken; but you should not enter the port of

destination without having a pilot on board, or, at least, without having made, and kept flying for the requisite space, the usual signal for a pilot, or without having used all due diligence, and adopted all practicable means, for obtaining one. I need scarcely add, that, as a matter of course, you must preserve evidence in the log-book of having done so.

But put the case, that you have kept a signal flying for a sufficient, or more than a sufficient, length of time, and that you have used every endeavour to obtain a pilot before entering the port of destination, and that, owing to the tempestuous state of the weather, or some other unsurmountable cause, the signal is not observed, and no pilot comes off, and the vessel cannot with safety remain in the offing,—what, then, are you to do? The only answer is, that, if you are a person of competent skill as a master, as the law presumes you to be, you are entitled yourself to conduct the vessel into port. This answer will be confirmed and illustrated by the following case, which was an action upon a policy of insurance, at and from Liverpool to the ship's port or ports of discharge in Sierra Leone. The vessel arrived off the river Sierra Leone, where there is a regular establishment of pilots, at three o'clock in the afternoon, and the master then hoisted a signal for a pilot; but, at ten o'clock, no pilot having come on board, the master attempted to enter the river, and, in doing so, the vessel struck the ground and was lost; it was left to the jury, whether the master, in entering the harbour without a pilot, did what a prudent man ought to have done under the circumstances, and a verdict having been found for the plaintiff, Lord Tenderden, Chief Justice, observed:—"It may be conceived that a vessel *coming out of harbour* must have a pilot, because the captain always has it in his power to procure one; but it seems to me, that, if the master of a vessel *arriving off a port* use due diligence to obtain a pilot, he does all that can be required by law. Here, the vessel arrived at Sierra Leone about three o'clock in the afternoon; the captain hoisted signals for a pilot, and, at ten, no pilot had come off. It seems to me, that, upon the evidence, the master did use due diligence to obtain a pilot, and, having done so, it was competent for him to exercise his discretion,—whether it were better to run the risk of entering the harbour without one, or to wait till the following day for a pilot. Here, acting to the best of his judgment, he attempted to enter the harbour without one, and, in so doing, the vessel was lost; and, I think that the underwriters are liable for a loss happening under these circumstances." And Parke, Justice, observed:—"If a vessel sails to a port where the establishment is such, that it is not always possible to procure the assistance of a pilot before the vessel enters into the difficult part of the navigation,

then, as the law compels no one to perform impossibilities, all that I can require in such a case is, that the master use all reasonable efforts to obtain one" (Phillips *v.* Headlam, 2 B. Ad., 383).

If the vessel is obliged to perform quarantine, before entering the port of discharge, the cargo must be properly aired, and taken care of during that time. At the port of London, the practice is, in such cases, for the consignee to send down persons, at his own expense, to pack and take care of the goods, and if he omit to do so, and the goods are damaged by being sent loose on shore, he has no claim for compensation against the master (Abbot, 380). But I apprehend, that, in general, and where there is no special usage to the contrary, it is the duty of the master, while the vessel is performing quarantine, to take the same charge of airing and attending to the cargo as he must do during the course of the voyage.

Should all intercourse with the port of destination be prohibited, or should the importation of these particular goods not be allowed, the contract of affreightment with the shipper is not thereby at an end, but you will be entitled to return to the port of lading with the cargo, and the shipper will be liable for the freight (Christy *v.* Row, 1 Taunt., 300).

If the port of destination is blockaded, and should the blockade have been known before sailing, this of itself will render the voyage illegal, both to the shippers and owners, provided the blockade is a real and effective, not merely a nominal or a relaxed blockade; and the act of sailing to a blockaded port, with an intention to break the blockade, will have the same effect. But it is always a question of fact, which must be proved, whether or not the blockade was known to the owners or master before sailing; and this knowledge will not be presumed, merely from the circumstance of the blockade having been officially notified to the government of this country, unless a reasonable time has elapsed after that notification before sailing, or unless the knowledge of the blockade can be traced to the master. Thus, in an action on a policy of insurance on goods, at and from Liverpool to Buenos Ayres, it was proved that the vessel sailed from Liverpool on the 4th of February 1826, but, having received damage, put into a port on the west coast of Scotland, on the 19th February, to repair, and sailed from it on the 12th March; in the interval, the master had gone to Greenock, and was absent five days:—the blockade of Buenos Ayres was notified in the *London Gazette* on the 18th February, and the insurance was effected on the 22nd of that month; the vessel arrived off Monte Video in May, and the master, on observing a number of ships together by night, dropped anchor, and waited till daylight for further information, when the vessel was taken by the squadron stationed for the blockade of Buenos Ayres,

and carried into Rio de Janeiro, where the cargo was taken out, and put into government stores: but there was no knowledge by the master of the existing blockade, till the ship came up to the blockading squadron by night:—the insured was found entitled to recover, because the knowledge of the captain was not to be presumed on the principle, that notice to a state is notice to all its subjects (Harratt *v.* Wise, 9 B. C., 712).

But when a blockade has existed for such a reasonable time as to make it a subject of general notoriety to neighbouring states, this will be sufficient to affect the subjects of these states; and this knowledge must be presumed from reasonable grounds of evidence. As where, during a blockade of Amsterdam, a Bremen vessel was captured on her voyage outward from Amsterdam, in breach of the blockade; — it was held, that as the blockade existed in fact, and could not have been unknown to the vessel, she had been guilty of a breach of the blockade, although no notification of it had been made to the Hanse Towns (*The Adelaide*, 2 Rob. 111).

However, if there is no intention, previous to sailing, of breaking the blockade, and the intention is, to inquire at some port of the blockading country as to the continuance of the blockade, this will not be illegal, as there is no intention of violating the blockade. As, where a vessel was insured at and from Liverpool, to any port or place in the river Plata, with liberty, in the event of a blockade, or being ordered off the river Plata, to proceed to any other port, and there wait, or discharge. On the 11th March, the vessel sailed from Liverpool, and was proceeding up the river Plata, to Buenos Ayres, when she met with a Brazilian frigate, below Monte Video, and was detained and sent into Monte Video, and after remaining for some time, was sent to Rio de Janeiro for adjudication. The notification of blockade of the ports in the river Plata, belonging to the government of Buenos Ayres, by the Emperor of Brazil, was published in the *London Gazette*, on the 18th February; and, in an action on the policy, it was held, that, as it was a part of the original intention to inquire as to the continuance of the blockade, at some port of the blockading country, the voyage was not in contravention of the law of nations, and a vessel may lawfully clear out for the blockaded port (Naylor *v.* Taylor, 9 B. C., 718).

If it was known at the time of entering into the charter-party, that the port of destination was in a state of blockade, this will be no defence to the shipowner for not sailing on the agreed-on voyage to that port; and therefore, where a vessel was chartered to proceed to Terceira, which port was, at the time, in a state of blockade by the government of Portugal, and the blockade had been notified to the English government, so that the parties entered into the charter-

party with an equal knowledge of its existence; but there was no evidence of any understanding that the master was to break the blockade of Terceira, in order to deliver the outward cargo: — it was held, in an action on the charter-party, that no difficulty attending the performance of the contract can be set up, as an excuse for its non-performance (Medeiros *v.* Hill, 8 Bing. 231).

What will amount to a breach of blockade,—whether it be a blockade in law or in fact,—will depend on circumstances. You may take a few examples of what, during the late wars, were held to be breaches of blockade, and which, should such an occurrence happen again, may guide you in such a voyage. For instance, it has been held, that warning on the spot is sufficient notification of a blockade existing in fact; and that, in such circumstances, a violation of the blockade by the master affects the ship, but not the cargo, unless the owners of the cargo knew that the cargo was an intended violation of the blockade (*The Mercurius*, Gardes, 1 Rob., 89);—that a master coming out of a blockaded port with a cargo is liable (*The Frederick Melhe*, Boyson, 1 Rob., 86);—that the drawing near to a blockaded port, with the determination to go close in under shore, though for the ostensible purpose of taking a pilot, is not allowed (*The Charlotte Christine*, Petersen, 6 Rob., 101);—that a deviation to the vicinity of a blockaded port, will not be admitted, if the master acts in such a manner as shews that his doing so does not proceed from justifiable ignorance (*The Adonis*, 5 Rob., 256; *The Neutralitat*, 6 Rob., 30; *The Gute Erwartung*, Gay, ib., 182);—that this deviation into a blockaded port will be presumed to be in the service of the cargo, so as to produce a condemnation of it (*The Alexander*, 4 Rob., 93);—that if the master goes voluntarily into a blockaded port, the sale of the cargo by compulsion in that port, will not be a sufficient excuse (*Byfield*, Foster, Edw., 188);—and that even a neutral vessel in ballast is not at liberty to proceed to a blockaded port, for the purpose of bringing away a cargo purchased before the commencement of the blockade (*Comet*, Mix, Edw. 32).

But although the port of destination be in a state of blockade, this, as you have already seen, does not discharge you from performance of your part of the charter-party; and certainly does not put an end to that contract for the conveyance of the goods, although it may operate as a temporary suspension in the performance of it. It is, therefore, the general rule, that where the obstacle is of this temporary nature, the master is entitled to wait for the removal of it, so as he may deliver his cargo and earn his freight, unless the cargo be of a perishable nature, and cannot endure the delay (Abbot, 600). In such a case of a perishable cargo, there can be no

doubt, that the master is entitled to proceed to the nearest neighbouring port, where the cargo can be advantageously disposed of, for the best interest of all concerned, as this seems to fall under the case of necessity, which authorises the master to dispose of the cargo.

Under the expression to furnish the vessel "with everything needful and necessary for the voyage," you are bound to procure, and have on board, all the papers and documents which are necessary or required for the proof of the property, and protection of the ship and cargo, by the law of the countries from and to which the vessel is sailing, and by the law of nations in general, and by the treaties between these particular states (Abbot, 347). If the vessel has sailed from a suspected port, or if there is a general alarm at the port of destination, and a bill of health is required before the vessel can be admitted, it is your duty to provide yourself with this necessary document; and should the vessel be excluded from her port of destination on account of her not being provided with this bill of health, you and your owners will be responsible (Levy *v.* Costerton, 1 Stark., 212). In like manner, also, during time of war, it was necessary, in trading to certain countries, or with certain ports, to have a licence or licences, by which the trading, which would otherwise have been illegal, was legalised. As to these licences, the general rules were:—that the terms and conditions, upon which the licence was granted, must be strictly complied with;—that, when any qualification is inserted, that must be strictly conformed to;—that the party using the licence must shew that he was authorised to obtain it, and how he obtained it;—but that any fraudulent alteration of the licence avoids it, even when the protection of it is claimed by a party innocent of the fraud;—although when, by unavoidable accident, the voyage is delayed beyond the time specified in the licence, yet, should the licenced adventure be honestly pursued within any part of the period, the voyage is protected (Park, 512-19).

If the vessel is to proceed to a port at which there is a quarantine establishment, or at which the vessel must perform quarantine, it is a common condition that the running days are only to commence when the vessel is ready to unload, or has received pratique. In one case, in which there was no quarantine establishment at the port of destination, nor any means of formally granting pratique, the fact that the vessel was at liberty to unload by a certain day, was a sufficient proof that the vessel had received pratique (Balley *v.* De la Arrogave, 7 A. E., 919).

When arrived at her port or place of destination, the master must moor or anchor his vessel safely, according to the custom of

the port or place, and make ready for delivering her cargo. That delivery must be made also according to the custom of the port or place, either at a wharf, over the ship's side, or in boats. If, in the latter case, the goods in the boats should be lost in their way from the ship to the shore, the effect will be the same as if they had been lost during the voyage; and, therefore, if the goods have to be landed in boats, according to custom, at that port or place, and if the goods in the boats be lost by a peril of the sea, neither you nor your owners will be liable (Johnson *v.* Benson, 1 B. B., 454). If, however, damage arises in the act of delivery from sea-water, insufficiency of tackling, or carelessness of the crew, or the like, the merchant will have his claim of damages.

The goods must be delivered in terms of the bills of lading, and in as good condition as they were received on board; unless, in signing the bills of lading, you have taken care to relieve yourself from responsibility by writing, "quantity and quality unknown,"—"contents unknown," or, "not liable for corruption." And by § 3 of the 18 & 19 Vict. c. 111, it is enacted, that every bill of lading in the hands of a consignee or indorsee for valuable consideration, representing goods to have been shipped on board a vessel, is conclusive evidence of that shipment, as against the master or other person signing the same, unless the holder of the bill of lading has had actual notice at the time of receiving the same, that the goods had not been, in fact, laden on board. But the master or other person so signing can exonerate himself in respect of such misrepresentation, by shewing, that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims. In cargoes of grain, the exact quantity of which has to be ascertained by measurement, difficulties may arise,—from the effects of heat and moisture, or the motion of the vessel, or from the variations in weights and measures, —whether any deficiency may not have arisen from these causes, or from actual embezzlement, which must be proved. In such cases, the preferable rule,—for calculating the freight, for instance,—is, to take the cargo according to its bulk at the time of loading, and not according to its bulk at the time of delivery (Gibson *v.* Sturge, 1 Jur. N. S., 259).

Doubts may, however, arise as to who is the proper party to whom the goods should be delivered. The general rule is the safe one,—that you can rarely be wrong, or incur responsibility, by adhering strictly to the terms of your engagement with the shippers (5 Abbot, 337). When the bills of lading are made deliverable to the shipper's own orders, the usual practice is, to send one of the bills of lading *unindorsed* to the consignee, as intimation of the ship-

ment, and another part, *indorsed*, to the shipper's own agent, to be delivered to the consignee on his complying with the condition upon which the consignment has been made,—as by accepting bills for the amount. The property of goods shipped on bills of lading in these terms, does not belong to the consignee, until he perform the conditions upon which he is entitled to possession of them; and, therefore, a master cannot safely deliver the goods unless upon production of the bill of lading, indorsed by the shipper, to whose order he became bound to deliver them. Of course, as a carrier merely, it is not for you to determine to whom the property of the goods belong, nor is it necessary you should mix yourself up with the nice questions that may arise, as to the right of property in the goods. Your duty is, to make a safe and sure delivery to those entitled to it; and you must, therefore, take care that the delivery is such as to discharge you and your owners from all further liability. For this purpose, it is essential, when bills of lading are signed, deliverable to the shipper's orders, that delivery should be made only on production of an indorsed bill of lading. For instance, orders were sent to Russia to purchase a cargo of corn, with instructions to draw for the amount on a house in London; the shippers in Russia informed the person from whom they had received the orders, that they had shipped it on his account, and that they had forwarded an *indorsed* bill of lading to the house in London, and had drawn upon them for part of the price, and upon himself for the residue; they also sent him an *unindorsed* bill of lading, and an invoice of the corn, stating it to have been bought for his order, and on his account; the bills were dishonoured, upon which the shipper's agent in London delivered the indorsed bill of lading to the house there; but the shipmaster delivered the cargo to the person who had sent the orders, and not to the house in London, pursuant to the bill of lading: — in an action against the shipowners for not delivering pursuant to the orders of the house in London, it was held, that the property did not vest in the person who sent the orders, absolutely, upon the shipment, but only subject to the condition that the bills were accepted; and that as they were not accepted, it never did vest in him; and that the house in London were, therefore, entitled to recover from the shipowners, the value of the grain at the time it was delivered to him (Brandt *v.* Bowlby, 2 B. Ad., 932).

Take another case, which, though it was not an action against the shipowners, yet involved the question of an improper delivery being made by the shipmaster. A consignor abroad received orders from his correspondent in this country, and shipped goods on his account and at his risk, taking the bills of lading from the master to the consignor's order, and transmitting one of the bills, *unindorsed*,

with an invoice, to the consignee, and informing him that he had drawn upon him for the amount;—by way of precaution, he sent another bill of lading *indorsed* to his own agent, but of this he did not inform the consignee; the master improperly delivered the goods to the consignee on production of the *unindorsed* bill of lading; and although, in an action by the holder of the indorsed bill of lading, it was held that the property of the goods had vested in the consignee *by delivery*, and that, therefore, the holder of the indorsed bill could not maintain an action against him for delivery of the goods, still there cannot be a doubt that the shipmaster, or his owners, would be responsible to the consignor for his so improperly delivering them (Cox *v.* Harden, 4 East., 211).

You will see, then, the danger into which you may involve yourself and your owners, by delivering upon an unindorsed bill of lading. If the bill of lading be indorsed in full,—that is, if the name of the party to whom it is indorsed be written above the shipper's name, —or if it be indorsed in blank only,—that is, without any name being inserted,—you will then be safe in making delivery to the party named, or who presents the bill of lading. But you should recollect, that it is your duty to adhere strictly to your engagement with the shipper, and, in doing so, you run little risk of incurring any responsibility, as the shipper can have little cause to complain of his own instructions being too strictly observed (Abbot, 337).

This is the case of bills of lading made deliverable to the order of the shipper, or to —— or assigns. But suppose a case, in which the bill of lading contains certain conditions, which are to be performed by the consignee before he can obtain delivery of the goods. You must, in this case, satisfy yourself that he has actually performed these conditions before you deliver the goods to him. For instance, a bill of lading was specially indorsed "deliverable to A. B., if he should accept and pay the accompanying draft; if not, to the holder of the draft." A. B. accepted the draft, and indorsed the bill of lading to another person for a valuable consideration, but did not pay the draft when it became due:—and it was held that the purchaser, not having ascertained whether the condition had been actually performed, had no title to the goods (Barrow *v.* Coles, 3 Camp., 92); and, unquestionably, had the shipmaster, under these circumstances, delivered the goods to the purchaser, he and his owners would have been liable for their value to the shipper. Again, in another case, a planter in Jamaica being the owner of sugars, the produce of his estate there, and indebted to a shipowner residing in London for more than their value, shipped them at Jamaica, on 4th April, on board a ship belonging to the shipowner which was in the habit of carrying supplies to Jamaica to the

estates of this planter and others, and was then employed in that course; on 6th April, the captain signed and handed to the planter a bill of lading, by which the sugars were to be delivered to the shipowner in London; on the same day, the planter made an indorsement on the bill of lading that the sugars were to be delivered to the shipowner, only on condition of his giving a security for payment of advances made by a third party,—plaintiff or pursuer,—by the aid of whose capital the sugars had been raised, otherwise the sugars to be delivered to his agent; and the planter delivered to the third party the bill of lading, which was never in the shipowner's hands; during the months of February and March preceding, the planter had written letters to the shipowner advising him, that the ship would sail with the sugars in question and others, directing him to insure the cargo, and advising him of bills drawn on account of the estates producing the sugars in question; and, on the 4th April, the planter had written to the third party, desiring him to secure himself for his balance with the produce of the estates; —the sugars arrived in London, and the shipowner paid the bills drawn on account of the estate, but did not comply with the conditions of the indorsement made on the 6th April:—and it was held that the third party,—plaintiff or pursuer,—was entitled to the sugars;—because,—1st, the planter had not parted with the property by delivering the sugars on board a ship so employed as above stated; 2d, nor by accepting the bill of lading as drawn on the 4th April by the captain, the planter being entitled to change the destination of the sugars till he had delivered them or the bill; 3d, and that the letters to the shipowner did not shew an intention to consign the specific property to him; and that, for these reasons (strengthened by proof of intention in the planter's letter of the 4th April), the indorsement to the third party passed the property (Mitchell *v.* Eades, 11 A. E., 888).

These instances may shew you, the care which ought to be exercised in delivering the goods to the party who has legal right to them, and who is legally entitled to receive them; and I will immediately shew you the course which, in these and other the like cases, ought to be followed.

I have said that, when goods are shipped to the order of the shipper, or ——, or assigns, delivery of the goods should not be made unless to the party who can produce an indorsed bill of lading; but goods may be shipped on bills of lading taken to the order, and on account and risk of a consignee or purchaser, and yet he may have no right to receive possession of them, he not having complied with the condition, as accepting drafts for the price, on which they were so shipped. As, for instance, parties sold wheat to purchasers,

for which the purchasers were to pay by a draft on a London banker; and the sellers delivered the wheat to a carrier, and sent a bill of lading to the purchasers; but, before the wheat came to the purchasers' possession, the sellers took it again and sold it, because the purchasers failed to send a draft on a London banker; and it was held that the purchasers could not pursue the sellers for delivery of the wheat (Wilmhurst *v.* Bowker, 5 Bing., N. C., 541). In a case already referred to (Brandt, *ut sup.*), the goods were deliverable to the shipper's own order, and an unindorsed bill of lading was transmitted to the purchaser, and an indorsed part to the shipper's agent in London, to be delivered to the purchaser on his giving security by bills for the price; he refused to do so; but, after the shipper's agent had claimed the goods on arrival, the master delivered them to the purchaser on his assurance that he was entitled to them as purchaser, and that they were shipped on his account and to his order; and the shippers were found entitled to recover the value of them from the shipowners. And, in another case now referred to (Mitchell, *ut sup.*), although the shipment had been made, and a bill of lading granted, deliverable to a person named, it was held that the shipper could attach conditions to the consignment, or even revoke it, before the bill of lading or the goods were actually delivered to the consignee.

Where goods have been consigned to an agent of the consignor without being for any special purpose, it may often turn out to be a difficult question,—depending upon the state of accounts between the principal and agent,—whether you can be safe in delivering the goods to the agent. These are matters which it is not to be expected you are to enter into; but if the agent has indorsed the bill of lading for value, there is no doubt that the onerous indorsee is entitled to receive the goods independently of the shippers, unless he had notice of some circumstance to prevent him from honestly and fairly accepting of the indorsation (Cuming *v.* Brown, 9 East., 506). Where, however, the consignment has been made for a special purpose, or to cover advances previously made by the agent, he acquires a special property in the goods from the time of delivery on board, and you are answerable to him for delivery. As where a manufacturer at Newcastle consigned goods to his agents in London, specifically to meet a bill drawn upon them, and transmitted to them a receipt, signed by the mate of the vessel, acknowledging the goods had been received on board to be delivered to them;—it was held that the appropriation of the goods was complete, and that the shipowners were liable in delivery to the consignees (Evans *v.* Nicholl, 4 Scott, N. C., 43). Where, also, bills of lading to the shipper's orders, indorsed in blank, were forwarded to the consig-

nees,—a banking-house,—in security for advances agreed to be made to the consignors, and the consignors having become bankrupt, their assignees claimed and obtained the goods from the shipmaster; but it was held that he was liable to make delivery to the consignees (Haille *v.* Smith, 1 B. P., 513). Where, also, goods were shipped, and bills of lading signed and transmitted to a factor, and it was proved by the correspondence to have been the intention of the principal to vest the property in the factor, as a security for previous advances made by him,—it was held that the factor had acquired a special property in the goods as soon as they were shipped on board, and that he was entitled to sue the master of the ship for them (Anderson *v.* Clarke, 2 Bing., 20). And where goods are specially consigned to a party named, that party has such a right of property in the goods so consigned to him, as to maintain an action against you or your owners for the non-delivery of these goods (Tronson *v.* Dent, 8 E. F. Moo., 420).

But neither you nor your owners are called upon to investigate, or decide upon, the right of the party who may be best entitled to the goods. You are merely the carrier,—a middleman,—who has undertaken to deliver the goods, in terms of your engagement in the bill of lading, and to make delivery in terms of it; and, when you do so, the shipper has very little ground to complain. Should the person to whom the goods were to be delivered, and who holds the bill of lading, have failed, or be notoriously insolvent, you should deliver to the person whom the consignor has duly authorised to receive them, under a guarantee to relieve you of all responsibility in doing so. If the shipper has indorsed the bills of lading to different persons, you will be warranted in delivering to the person to whom he has first made the indorsement (Caldwell *v.* Ball, 1 T. R., 205). Should two or more parties claim right to the goods, these should be delivered to the one who can give you the best security, upon which you can rely, to indemnify you against the consequences of your so delivering them. And should none of these methods be practicable, or should the goods be stopped *in transitu* by the shipper, or should a holder of a bill of lading not appear during the lay-days, you ought then to deposit the goods with a wharfinger or warehouseman, in your own name as master, in security of the freight and charges. In any of these ways, you can free yourself and owners from all responsibility as to the goods, or from any question as to the party best entitled to them (Abbot, 337, 540).

It is usual, on the arrival of the vessel at her port of discharge, for the master to take to a protest against wind and weather, as it is called, in presence of a notary public, or a British consul, where there is no notary. This protest is merely a narration, from the

master's information, of the particular occurrences of the voyage,—of the storms or rough weather which have been encountered,—of the accidents which may have occurred,—and of the probable damage which may have been sustained from these causes. However proper and necessary it may be for you thus to protest, and whatever credit may be given to an instrument of protest, when free from all suspicion, amongst merchants and underwriters, yet these protests are not received in the courts of law in this country as evidence for you or your owners, although it may be used as evidence against you; and, therefore, you should be prepared to support the statements in it by the evidence of your log-book, of yourself, and mate, or some other of your trustworthy seamen (Abbot, 880.)

Before proceeding to the subject of freight, in the next letter, I may here notice the lay-days allowed at the port of discharge, and the demurrage that may be incurred there.

Referring to what I have already said as to the manner in which the lay-days may be mentioned,—where a certain number of lay-days are stated in the bill of lading, or charter-party, and what is to be understood when the usual ordinary lay-days only are allowed,—it is necessary for you to bear in mind, that the lay-days only commence, from the time of the vessel's arrival at the usual place of discharge in the port, and not from the time of her arrival in port merely (Brereton *v.* Chapman, 7 Bing., 539); and that, if the usual place of discharge be in a dock, the lay-days commence from the time of her arrival in the dock, and not of her coming to her berth (Brown *v.* Johnson, 10 M. W., 331).

A particular place may be stipulated for the delivery of the cargo, or one of two places may, according to circumstances, be left to the selection of the master; and where the former is fixed, the lay-days,—as in the case of the vessel's arrival at the usual place of discharge in a port, or her arrival in a dock,—will run from the vessel's arrival at the place so stipulated; and, in the latter case, from the arrival of the vessel at that place which the master has selected. Thus, where it was agreed to convey a cargo to Oporto, and if the river was in possession of an enemy, to unload at Foz, outside the harbour or at some other port near the bar, where the vessel could lie in safety; the freight was to be £475, or, if the vessel could not enter Oporto, and discharge there, only £300; twenty-five working days were to be allowed for unloading, to commence when the ship was off the castle of Foz, or other point where she was to be discharged,—to continue whilst there,—to cease if blown off the coast by stress of weather,—and to recommence when again at anchor at her station;—the vessel arrived at Foz on 3rd June, and, an enemy

being in possession of the river, commenced unloading there; the vessel was detained there, partly for the freighter's convenience, and partly by being obliged to slip her cable in bad weather, till 25th August,—and, by that time had discharged seven-eighths of her cargo;—the enemy had then quitted the river, and the vessel entered Oporto, and discharged the remaining part of her cargo:—in a question under the charter-party, as to the commencement of the lay-days, it was held that, by the charter-party, they were to commence at the castle of Foz, or other point, where the vessel was to be discharged,—to cease if the vessel be blown off the coast,—and to commence again on her regaining her station (Gibbons *v.* Buisson, 1 Bing. N. C., 283).

On the expiry of the lay-days, either fixed, or usual and customary, at the port of discharge, it is prudent and proper to take a protest against the consignee, or other party receiving delivery of the cargo, intimating to him,—the date of the vessel's being ready to discharge,—the number of days allowed for unloading,—the date of the expiry of these days,—and that the vessel then commences to lie on demurrage,—so as to fix with certainty the precise days, and avoid future dispute as to these. The rate of demurrage per day is usually fixed at a certain sum in the charter-party or bill of lading, and this rule is to be taken as the measure of the compensation to be allowed; but it is open to the shipowner to shew that more expense and loss has been incurred, and to the freighter to show less has been incurred (Moorsom *v.* Bell, 2 Camp., 616). But when the stipulation is, that the vessel is to be unloaded within the usual and accustomed time, and the vessel arrived in the docks, but, owing to the crowded state of the docks, could not get a berth for a considerable time,—the merchant will not be answerable for a delay of this sort,—although by bonding the goods, and immediate payment of the duties, they might have been landed in a much shorter time (Rogers *v.* Forrester, 2 Camp., 483; Burmester *v.* Hodgson, Ib., 488). It will be no defence, however, to this claim for demurrage, that the goods could not be landed without a special order from the Lords of the Treasury,—it being the duty of the merchant to obtain such an order (Hill *v.* Idle, 1 Stark., 111); or that the delay in completing the unloading was caused by an improper act of the custom-house officers (Bessey *v.* Evans, 4 Camp., 131).

In the case of a general ship, however, where the shippers are allowed a certain number of days to take out the goods,—it may often be impossible that particular goods can be got at to be discharged within that time; and although it was once held that, notwithstanding it was not the fault of the merchant, but of the master himself, that his goods were not got out until other goods which

lay above them were got out, still the merchant was liable in demurrage (Leer *v.* Yates, 3 Taunt., 387); yet the better opinion,—and an opinion more agreeable to common-sense,—seems now to be, that "if a consignee cannot get his goods because some other person's goods prevent him, he is not liable for the delay of the vessel" (Dobson *v.* Droop, 1 M. M., 441) and that, "if the goods of the particular consignee are not ready for discharge at the time of the ship's arrival, he must have a reasonable time for removing them after they are so. If in such a case, using reasonable despatch, he cannot clear them within the stipulated period, from the ship's being ready to discharge her cargo generally, he will not be liable for demurrage till the expiration of such a reasonable time; but when it is expired he will be liable, though the stipulated period, if computed from the time when the discharge of his own goods could have commenced, was not at an end" (Rogers *v.* Hunter, 1 M. M., 63).

As master you cannot maintain an action in your own name,—where the goods have been delivered to a consignee, under a bill of lading "on payment of freight,"—against the consignee on any implied or understood agreement or contract on his part to pay demurrage (Evans *v.* Foster, 1 B. Ad., 118);—although this might be easily obviated by inserting on the margin that a certain number of days is to be allowed for unloading, or demurrage paid, at a certain rate per day (Jesson *v.* Solly, 4 Taunt., 52).—I am, &c.

LETTER XVIII.

Freight—Earning of—Goods must be carried to port of destination—Vessel disabled—Goods damaged—Voyage divided—Entire voyage—Rateable freight—Goods received at intermediate port—Or carried on by shippers—Abandoned to insurers—Voyage not commenced—Slump freight—Must load to actual tonnage of vessel—Voyage on time—Risk of duration—Freight paid beforehand—If, can be recovered back—Instances of—When it can be recovered—Instances of—Where no freight can be claimed—Instances of—When freight insured can be recovered from insurers—When risk attaches—Goods not on board—Instances of—Goods on board—Or contract for putting—How contract may be proved—Parties liable to pay freight—Consignee—Consignor—Purchaser taking under bill of lading—Exceptions—Instances of—Liability of Consignor—How discharged—Bills taken for freight—Payment of freight—Mode of—Lien for—On goods of sub-charterers—No lien for demurrage, &c.—How agreed to be discharged—Goods damaged—Can merchant abandon goods for freight—Dead freight—Primage and average.

Gentlemen,—I now proceed to the important subject of freight. You are, of course aware, that freight is not only the subject of contract, as to the conveyance of goods, but that it is commonly also the subject of insurance; and, therefore, while you must be inti-

mately acquainted with the nature of freight, in regard to the former, you should, at the same time, be well acquainted with it in regard to the latter also. Let us attend, then, in the first place, to the earning of freight.

All our writers on this subject agree in this general rule, that the freight cannot be earned unless the goods have been carried,—that the whole voyage must be completely performed,—and the goods delivered at the agreed-on port of destination,—to entitle the owner to his freight (Abbot, 406; Holt, 429). If, therefore, the goods have been carried to their place of destination, and delivered there, the shipowner becomes entitled to his whole freight, unless in so far as he has been prevented from completing the voyage, and delivering the goods, by some of the perils insured against, or by other unavoidable accident. And this full freight will be due, although the vessel may have been lost or disabled during the voyage, so as to be unable to complete it, provided the goods are saved, and either carried on to the port of destination, or accepted by the merchant at a place short of that destination, without requiring them to be carried on to that port. Where the ship is disabled by the perils of the sea, and can be repaired, the master can retain the goods, until his own ship be repaired, and in a state to carry them on; or he may hire another vessel, and send the goods on to the port of destination; and, in either case, the full freight will be due, although the goods may have been carried, in that substituted ship, at a less rate than the original freight. But, if the merchant appear, and insist on the goods being delivered to him at that intermediate port, without requiring the master, who is able and willing, to carry them on to the destined port, and so prevent him from fulfilling his part of the contract, which he has a right to insist on doing, the whole freight is due (Luke *v.* Lyde, 2 Burr., 887; Hunter *v.* Princep, 10 East., 378; Shipton *v.* Thornton, 9 A. E., 314). If the goods arrive at the port of destination in a damaged state, arising either from their own inherent corruptibility, or from the perils of the sea, and these are received by the merchant, or given up by him to the underwriters, the whole freight will be due, and he cannot set off the damages against the claim for freight; nor will the merchant be allowed to choose the part of the goods which is not damaged, and to reject the damaged part (Lutwedge *v.* Gray, 1 C. S., 119). The right of the merchant to abandon the goods for the freight will be afterwards considered.

Where the voyage is divided into distinct parts, as an outward and a homeward voyage, or from port to port, and freight is to be paid for each distinct part, or so much per month, and the vessel is lost on the homeward voyage, or after some parts of the voyage are

performed, the freight will be due for the outward voyage, or for those parts performed (Makrell *v.* Simond, Abbot, 464; De Silvalle *v.* Kendall, 4 M. S., 37). But if the whole is one entire voyage, and the vessel is lost on the homeward, or last part of the voyage, no freight will be due (Mashiter *v.* Buller, 1 Camp., 84); and if the freight is stipulated to be paid at so much per ton, per calendar month, and what is earned at the time of the vessel's arrival at the first destined port abroad, to be paid within ten days after arrival, and the vessel is lost before her arrival at that port, no freight will be due (Gibbon *v.* Mendez, 2 B. A., 17).

But it may happen that, although the whole voyage has been performed, part only of the cargo has been delivered to the merchant; or, although the whole goods have been received by the merchant, the vessel has not performed the whole voyage; and, in such cases, freight will be due, either according to the quantity of goods delivered, or the proportion of the voyage performed. In the former, where the freight is to be paid at so much per ton or bale, and the whole number agreed on has not been brought, the merchant must pay for the number actually brought (Holt, 430). As, for example, —a vessel laden with seventeen keels of coals, was chartered for a voyage from South Shields to Hamburgh, and the freight at so much per keel, was payable on delivery of the cargo;—the master sailed for Hamburgh, and arrived at Cuxhaven, so near to Hamburgh that the voyage might have been completed in the course of the day; but, being prevented by the commander of his Majesty's ships from proceeding to Hamburgh, which the French forces were then approaching, the merchant's correspondents desired the master to sail to Gluckstadt, and there deliver the cargo: seven keels and one chaldron were there delivered into lighters that were sent, and the vessel staid long enough to have delivered the whole quantity, had lighters been sent to receive it;—but the master was ordered by the British consul, and the commander of his Majesty's ships, to return to England,—the French having entered Hamburgh,—which he did, and landed the rest of the cargo at Shields:—it was held, that the master having been prevented, by one of the restraints excepted in the charter-party, from delivering the whole cargo, he was entitled to a rateable freight for the quantity delivered (Christie *v.* Row, 1 Taunt., 300.)

In the event of the master being unable or unwilling to proceed and complete the voyage, and the shippers either receive the goods from the master at the intermediate port, or themselves carry them on to the port of destination, the master will be entitled to a rateable proportion of freight, according to the portion of the voyage performed. Accordingly, it was held, in two of the cases already

referred to (Luke & Lntwedge, *ut sup.*),—where the merchant took the goods without reqniring the master to carry them on,—and where the merchants themselves bronght the goods on to the port of destination,—that the master was entitled to a rateable freight, according to the portion of the voyage performed. In another case, the vessel had been taken, carried into France, and condemned there, and the cargo sold; bnt restitntion being awarded, the proceeds were remitted to the merchants, and freight was fonnd dne for the proportion of the voyage which was performed (Baillie *v.* Mondigliani, 1 Park, 116). And in another case, the vessel was stranded, and the shippers abandoned to the underwriters, who took possession of the greater part of the cargo, and sold it; the master was found entitled to such proportion of the freight, as might correspond to the part of the stipnlated voyage which the vessel had performed, and to the quantity of goods delivered (Mitchell *v.* Darthez, 2 Bing. N. C., 556).

The right to the freight only commences when the vessel breaks gronnd, and has actually begun her voyage; so that, if she should be lost before doing so, and, even after part, or the whole of her cargo is on board,—thongh without any fault on the master's part, she be prevented from actnally commencing her voyage, there will be no claim against the shippers for freight (Abbot, 462). And, therefore, where a ship, loaded with coals from Sunderland for Constantinople, left the harbour and anchored in the roads, bnt her crew was not complete,—the master and mate had not come on board,—her shrouds and cables were not in proper condition,—and the bills of lading were not signed;—the intention being, that she should remain at anchor in the roadstead nntil the preparations for the voyage were complete;—bnt the ship and cargo were there lost:—it was held that she had not sailed on the voyage for Constantinople in pursuance of the charter-party (Thomson *v.* Gillespy, 1 Jur. N. S., 779). The recovery of the freight from the underwriters, under a policy of insurance, is a different qnestion, which I will come to by and by. When the vessel does not commence the voyage, any expense of preparing to receive the cargo, or of loading it, mnst be lost to the owners (Curling *v.* Long, 1 B. P., 632); and, as I have already said, in order to entitle the shipowner to his full freight, the voyage must be completed, and the cargo delivered. So, therefore, where, by the charter-party, the master was to deliver the ontward cargo at Naples, and, having done so, the freighter was to provide a retnrn cargo, and pay a snm on delivery of the outward cargo, as earned for ontward freight; but the outward cargo was seized by the government at Naples, and the master was thereby prevented from delivering it to the consignees of the merchant:—it was held, that

the merchant was not liable to pay the outward freight (Storer *v.* Gordon, 3 M. S., 308). In like manner, under a charter-party, the freight, at so much per calendar month of the voyage, was to be paid on the arrival and discharge of the vessel, at her destined port in Great Britain; the vessel sailed on the voyage, and, before her arrival at the outward port, was, without the fault of the master or crew, wrongfully seized by persons unknown, and sent to London, and there detained, but afterwards liberated and restored to the owner; after making the necessary repairs, and properly fitting, victualling, and manning her, he gave notice to the freighter, and offered to prosecute and complete the voyage, requiring him to furnish the necessary directions for that purpose, which he refused to do, or to permit the vessel to pursue the voyage, and wholly renounced the charter-party, and discharged the owner from further prosecuting it:—in an action against the freighter, for the computed amount of the freight, it was held, that the freight being only payable on the arrival and discharge of the ship at her destined port in Great Britain, an offer by the owner to perform the voyage, and a refusal by the freighter, were not equivalent to actual performance itself, and, consequently that the owner was not entitled to recover the freight (Smith *v.* Wilson, 8 East., 437). And, in a case already referred to, the freighter, by the charter-party, agreed to pay freight for the use of the ship, at a certain rate per ton, per calendar month, during the term of six calendar months at least, and so in proportion for a less time than a whole month, and at the like rate for such further time, and until her final discharge in London, or up to the day of her being lost, captured, or last seen or heard of,—such freight to be paid to the master in cash, in the following manner:—so much as might be earned at the time of the arrival of the ship, at her first destined port abroad, to be paid within ten days after such arrival, and the remainder at certain specified periods:—the vessel was lost by perils of the sea, before her arrival at her first destined port, and it was held that no freight was due (Gibbon *v.* Mendez, *ut sup.*).

If a slump sum is stipulated, as the freight of an entire ship, or of a distinct portion of a ship, for the whole voyage, the full sum is due, though the merchant may not have laden goods to the full extent. If the freight is so much per ton, according to the tonnage of the vessel, the freighter must pay freight for the actual number of tons which the vessel is capable of containing, and not according to the number of tons mentioned in the registry. As where a vessel was described as being of the burden of 261 tons, or thereby, and the charter-party was for a full and complete cargo, at a rateable freight:—it was held, that the loading of goods, equal in number of tons to the tonnage described in the charter-party, was not a performance of

this agreement, but, that the measure of a full and complete cargo is, such a number of tons as the ship can, without injury, carry (Hunter *v.* Fry, 2 B. A. 421); and if the agreement is to pay a certain rate of freight for each cask or bale, the merchant must, in the first place, pay according to the number of casks or bales actually shipped or delivered, although the whole number agreed on may not have been brought, the merchant having his action of damages (Abbot, 410; Holt, 430).

When the freighter is to pay a certain sum of freight by the month, week, or other portion of time the voyage may occupy, the risk of the longness or shortness of the duration falls upon the merchant; and should no precise day be fixed for the voyage commencing, it will be held to commence on the day the vessel actually breaks ground, and sails on her intended voyage,—to continue during the whole course of the voyage,—and also during any unavoidable delays, not caused by the neglect or misconduct of the master or owners, or by such other causes as will suspend the contract of affreightment for a particular period (Abbot, 413). It is no answer, therefore, to an action for freight for twelve months, to say, that the vessel was not made duly tight and strong, and had been compelled to stop at Portsmouth to repair, in consequence of which the master had been delayed in the receipt of his cargo;—because the court held, that the freighter had accepted the ship, in the condition in which she was, immediately after the charter-party, by putting his goods on board, and because the shipowner had performed the voyage, though imperfectly,—from which imperfect performance, if the merchant had received any injury, he had his action of damages (Havelock *v.* Geddes, 10 East., 555). So also, where a vessel, freighted on time, was captured, confiscated, and detained some weeks; but when liberated, she took in a new cargo, and arrived:—freight was held to be due for the whole time,—as for a voyage never discontinued, and as if the detention had arisen from contrary winds or embargo (Moorsom *v.* Greaves, 2 Camp., 627). And where the freighter was to pay so much per month, for six months certain, and so in proportion for any longer time he might keep the ship; and she was to be kept in repair by the owner during the voyage; certain repairs were necessary, which occupied four weeks; but the freighter was held not entitled to deduct that time, in calculating the freight he had to pay (Ripley *v.* Scaife, 5 B. C., 167). In a voyage on time, the month is a calendar, not a lunar month (Jolly *v.* Young, 1 Esp., 186); and, unless in voyages on time, the risk of the duration of the voyage, in all other cases, lies upon the owners themselves (Abbot, 413).

Although the general rule is, that freight is only demandable after

the voyage has been performed, and the goods delivered, yet there is nothing to prevent parties from making an agreement that the freight is to be paid, unconditionally, beforehand, without regard to the completion of the voyage, or that an advance of money shall be paid beforehand to the owner, which may or may not be deducted from the freight, according to the vessel's arriving safe, or otherwise; provided, either this appears from express words, or the understanding of the parties is sufficiently intelligible. As where the contract for the conveyance of the goods was verbal merely, but the broker who freighted the ship told the shipper, that the freight of goods from London to the Cape was £5 per ton, if paid in London, and £7 if paid in the Cape, and the shipper preferred the contract at £5 per ton;—soon after the vessel sailed, the broker called upon the shipper for payment, who promised to call and pay it on the following Monday; but the vessel was lost:—and, in an action for payment of the freight,—it was held that the meaning of the agreement was, that the money should be paid at all events upon the delivery of the goods on board the ship at London; the Lord Chief Justice observing,—"there is no doubt that a man may agree to pay money on the delivery of the goods on board the ship, call it what you will" (Andrew *v.* Moorhouse, 5 Taunt., 435). In like manner, where a charter-party bore, that £120 were to be paid for the freight of the outward cargo at Maranham, and as much cash as might be found necessary there, for the vessel's disbursements, to be advanced by the merchant or his agent to the master, free from interest and commission, at the current exchange of the place, and *the residue of such freight* to be paid on delivery of the homeward cargo in Liverpool:—the vessel was lost by capture on the homeward voyage,—and it was found that the merchant was not entitled to recover, under the charter-party, money advanced by him for the vessel's disbursements at Maranham (De Silvalle *v.* Kendall, 4 M. S. 37). And, in another case, the freighter was to pay the owner, for the voyage, £1 per ton per month on the vessel's tonnage,—to pay four months of such hire in advance,—and, at the end of six months, two further months' pay, and so on in every succeeding two months, and the balance due at termination of such hiring in cash or approved bills; and further, if the vessel should be lost or captured, the freight, by time, should be payable up to the time she was lost or captured, or last heard of:—the vessel was lost before the expiration of the four months for which payment had been made in advance; and in an action by the freighter, to have the money so advanced returned to him, his claim was rejected (Saunders *v.* Drew, 3 B. Ad., 445).

But in a case in which the bills of lading bore,—some of them,

"freight for the said goods being paid in London,"—and others, "the shippers paying freight for the said goods, in London,"—and these were the only evidence of the agreement; the vessel was lost on the voyage; and, in an action by the owner against the shippers, on an implied promise to pay him a certain sum of money on the shipment of the goods:—it was held, that the words qnoted meant no more than that the freight should be paid in London, instead of Lisbon, and did not dispense with performance of the voyage; and that if the shipper had paid the freight npon the shipment of the goods, he might have recovered it back (Mashiter *v.* Buller, 1 Camp., 84). And where, by charter-party, one-half the freight was to be paid on right delivery of the cargo, the other by bill on London at four months, and the captain was to be supplied with cash for the ship's nse, in pursuance of which he drew a bill which was accepted and paid:—the vessel was lost on her homeward voyage; and it was decided that this bill was a loan to be reimbursed by the shipowners, and being no part of the freight, could not be recovered by the merchant from the nnderwriters, under an insurance upon the ship and all the goods on board (Manfield *v.* Maitland, 4 B. A., 583).

Bnt, besides the instances already given, in which no freight will be dne, there may be other cases, in which also, there will be no claim for any part of the freight. For instance,—on a homeward voyage, the vessel received damage, put into a port to repair,—and part of the cargo was sold to defray the expenses; thereafter she was captured, recaptured, and sent into St Kitts', where she was driven on shore and wrecked, but the remaining part of the cargo was saved, and sold under warrant of a magistrate, and the proceeds remitted to the shipowners, who claimed retention of it for the freight of that part of the voyage performed:—bnt it was held, that the master's conduct, in obtaining an order for selling the goods, and selling them accordingly,—which was an unnecessary act, and which disabled him from forwarding the goods,—was, in effect, declining to proceed to earn any freight, and, therefore, entitled the shipper to the entire proceeds of the goods, without any allowance for freight (Hnnter *v.* Prinsep, 10 East., 378). In another case, the vessel sailed, with a cargo of coals for Lisbon, to a distant English port, to take convoy for the voyage, the freight being payable on the right delivery of the cargo; at that port, she was detained a considerable time by contrary winds; and, after having joined convoy, and received sailing instructions, these were recalled,—the ports of Portugal being shnt against British ships, by the Portuguese government,—and the vessel returned to Spithead, where she remained for abont two months, at the expiration of which time, the master for-

mally required the freighters to land the cargo; but they would not interfere, and he subsequently landed them, and they were sold by consent of all parties, without prejudice to either party:—in an action by the master against the merchant for freight, for the proportion of the voyage performed, and for the detention of the ship, the court held, that he was not entitled to recover,—the parties having entered into a special contract, by which freight was made payable in one event only,—that of a right delivery of the cargo, according to the terms of the contract, and that event had not taken place (Liddard *v.* Lopez, 10 East., 526). And, in another case, a vessel was on a voyage from Charleston to a port in Holland; but, having received information sailing up the Channel, of the British orders in council,—for the capture and condemnation of vessels trading to ports at war with Great Britain, or from which the British flag was excluded,—the master brought the ship to London, landed the cargo, and offered to deliver it to the shipper's agents, on payment of his freight and charges:—it was decided, that the master had no claim for freight, there having been no acceptance of the goods short of the port of destination, and no foundation for a promise to pay freight, *pro rata itineris* (according to the proportion of the voyage) (Osgood *v.* Groning, 2 Camp., 466).

You know that it is a common practice for the owners also to insure the freight to which they may become entitled, and before proceeding to the liability of parties, under the contract of affreightment, it may be as well to see, in what cases the value of the freight insured can be recovered from the underwriters.

Here, the general rule is (contrary to what is the rule as to the payment of freight), that the risk attaches, under the policy, from the time the goods to be carried are put on board; but the insured can only recover for the goods actually on board at the time of the loss, whether under an open or valued policy, unless there has been a regular contract or charter for the shipment of the whole; and, if the goods are not actually on board, there must be the same contract for the shipment of goods which were ready to be put on board, and which the vessel was ready to receive, so that the owners would have earned freight, had they not been prevented by some of the perils insured against (1 Park, 55; 1 Arn., 202). A few examples will illustrate all the branches of this rule.

Let us first take a case where there was no charter-party, or contract of affreightment. A vessel went out with a cargo to Hayti, which was to be bartered for other goods, to be brought back to Liverpool in the same vessel. She arrived at Hayti, and part of the outward cargo was bartered for fifty-five bales of cotton, which were put on board, when she was lost by the perils of the sea, with

the remainder of the outward cargo on board; but this, though damaged, was afterwards saved and exchanged for other goods, the produce of the island;—in an action against the underwriter on freight, for the loss of the freight of the homeward voyage, it was held that the insured could only recover for the freight of the fifty-five bales of cotton on board (Forbes *v.* Cowie, 1 Camp., 320). This case was an open policy; but the same case came again before the court on a valued policy, and the same decision was given,—Lord Ellenborough remarking,—"In this case, as there was no contract under which the shipowner could claim freight, but for the goods actually shipped on the homeward voyage, the assured could have made no claim had this been an open policy, but to the extent of the actual freight on the fifty-five bales of cotton, which were shipped for this country, and of the premiums and commission thereon;—the question then is,—whether it makes any essential difference that this is the case of a valued policy; and we are of opinion, on full consideration, that it does not" (Forbes *v.* Aspinall, 12 East., 323).

Where, however, either the goods were put on board, from the carriage of which freight would result, or there was some contract, under which the shipowner, unless for some of the perils insured against, would have been entitled to demand freight,—he will be entitled to receive the value of such freight under the policy. As, for instance,—a vessel was chartered on a voyage and back, at a certain freight upon the outward cargo; and, after delivering her outward cargo, the charterers were to provide her a full cargo homeward at the current freight, and this freight was insured;—while the vessel was delivering her outward cargo, and before any part of the homeward cargo was on board, she was captured:—as the contract of affreightment, under the charter-party, was entire,—it was held, that the policy on the homeward cargo had attached, and that the owners could recover from the underwriters (Horncastle *v.* Suart, 7 East., 400). In another case, on an insurance on freight, at and from the port or place of loading, to the port or place of discharge, the vessel put into the former port, for the purpose of repairs, which were completed, and a full cargo purchased for the owner, and deposited in warehouses, seven miles distant, ready to be put on board; while in the act of being got out of dock, the vessel received so much injury as to make her a total wreck, and an abandonment was necessary:—it was held, that the insured on freight was entitled to recover from the underwriters (De Vaux *v.* J'Ansen, 5 Bing. N. C., 519). And, under an insurance on freight, the shipowner is entitled to recover from the underwriters, the value of the benefit he would have derived from carrying his own goods on

the voyage insured, if there had been no loss (Flint *v.* Flemying, 1 B. Ad., 45).

The contract for the carriage of the goods may, in a question with the underwriters, be proved, either by a written agreement (Truscott *v.* Christie, 2 B. B., 321), or, it may be made out from letters only (Park *v.* Hebson, 2 B. B., 326), or by witnesses merely (Flint, *ut sup.*).

Let ns now see, who are the parties liable to pay freight; and, here, the general rule is, that the person who receives the goods, under a bill of lading, is liable to pay the freight of these goods, and that any one accepting delivery under a bill of lading, binding the consignor or consignee, or his assigns, to pay freight, becomes liable so to pay. It is another general rule that, failing payment of the freight being made by the consignee, or person receiving the goods, the consignor, or person shipping the goods, remains liable for the freight; but, it may now be taken as settled, that a consignee, or a purchaser from him, taking the goods under a bill of lading, stipulating that the delivery is to be made to the consignee, or his assigns, he or they paying freight for the same, becomes liable for the freight (Abbot, 421-2).

The only difficulties are, either when the goods are received nnder bills of lading, which do not stipulate for payment of the freight, as a condition of receiving the goods; or, where the party receiving them, does not do so under, or in virtue of the bills of lading. Thus, —in regard to the former,—where goods were shipped on a bill of lading to the charterers or their assignees, "he or they paying freight as per charter-party," which had been entered into with the shippers, and the bill of lading was indorsed to the party who had received the goods, and these were delivered and entered in his name, without any demand of freight:—it was held, that the contract for payment of freight rested on the charter-party for the voyage and time stipulated,—and that there was no implied agreement to pay freight, as against the indorsee of the bill of lading (Moorsom *v.* Kymer, 2 M. S., 303). And,—in regard to the latter, —where the goods are received, not under the bill of lading, it was held, that, where the goods were received by an individual, acting only as agent for the shippers, and under instructions to do the best for them, that individual was not liable for the freight (Ward *v.* Felton, 1 East., 507); and where the goods have been delivered under the orders of the consignees, who were also charterers of the vessel, the person so receiving delivery was not liable for the freight, upon the ground of an implied promise to pay freight, unless it can appear, from the previous dealings and usage between the parties, that they had been in the habit of receiving goods in the same

manner, and paying freight for them (Wilson *v.* Kymer, 1 M. S., 157). But, if the delivery is made under, or in virtue of, the bill of lading, though it be merely to a warehouse-keeper, as agent for the shipper, he will be liable for the freight (Bell *v.* Kymer, 5 Taunt., 477); and the same holds, though the person receiving the goods should be the indorsee of the bill of lading, which conditions for the person named, or his assigns, paying freight (Cock *v.* Taylor, 13 East., 399).

But, although the goods may have been delivered without payment of the freight, or although the consignee, or person receiving the goods, may not be able to pay freight, the consignor, or shipper is, in the general case, still answerable for the freight. As, where the master took a bill from the consignee drawn upon the shipper, for a balance of the freight, and the shipper refused to accept of it,—he was, however, found liable for that balance of the freight, upon the charter-party which had been originally entered into with him (Tapley *v.* Martens, 8 T. R., 451). Where also, the goods had been delivered, but the master could not get payment of the freight from the consignee, the consignor was held liable for it (Christie *v.* Row, 1 Taunt., 300); and this obligation upon the shipper or consignor, will not be discharged, under a charter-party, by the master delivering the goods to the consignee, without demanding payment of the freight (Shepherd *v.* De Bernales, 18 East., 565);—nor by the master taking a bill for the freight, which is afterwards dishonoured (Marsh *v.* Pedder, 4 Camp., 257),—unless he take that bill voluntarily, and for his own convenience, without insisting upon payment in cash (Strong *v.* Hart, 6 B. C., 160). Where the shipper is also the owner of the goods, his liability for the freight will still continue, though the master may have delivered them, without demanding freight, and that whether the goods have been shipped under a charter-party, or on a bill of lading for the shipper's account and risk,—the clause in the bill of lading being introduced merely for the benefit of the master and shipowner, and the owner of the goods will not be discharged of his liability, by the neglect to obtain payment from the consignee (Domett *v.* Beckford, 5 B. Ad., 521).

Payment of the freight is generally fixed by the terms of the charter-party, where there is one; and where there has been no express bargain as to this payment, or the mode of making the payment, the master is entitled to detain the goods in his possession, until his freight be paid; and he may land the goods at a wharf, and detain them there; or, where the goods have to be landed in the King's warehouse, or in dock warehouses, under the revenue statutes, for payment of the duties, the master can enter them in his own name, by which he does not lose possession, nor is his lien discharged (Abbot, 300, 414; 6 Geo. 4, c. 112, § 45); and this right

of lien extends over every part of the cargo, for the freight of the whole, where the whole belongs to the same individual (Soldergreen *v.* Flight, quoted 6 East., 622). And, where, by the charter-party, the payment of the freight and the delivery of the cargo are to be done at one and the same time, and the cargo is such that it can be delivered in separate parts,—the delivery of part is not a waiver of the master's right of lien upon the remainder, and he may refuse to deliver the remainder unless the freight is paid by the consignee (Moller *v.* Young, 1 Jur. N. S., 934). The master cannot, however, detain the goods on board, until actual payment, but he must allow the merchant an opportunity of examining their condition (Abbot, 377); and, where there are sub-freighters, the master can only claim from each, the freight agreed to be paid by each to the original freighters (Mitchenson *v.* Begbie, 9 Bing., 190). The bankruptcy of the charterer, or his assignment or pledge of the goods, does not defeat this lien (Abbot, 299); and the goods of the sub-freighters are liable to a lien, to the extent of the sums of freight due by each for his goods (Faith *v.* East India Co., 4 B. A., 630); but the master is not bound, at his peril, to exercise this right of lien, or to insist on receiving payment of the freight before delivery of the goods; and, if the goods are delivered, and the freight not paid by the consignee, the merchant-charterer may be afterwards sued for it upon the charter-party (Christie, *ut sup.*). There is no lien for demurrage, or pilotage, or port charges, or for dead freight, or a sum of damages in consequence of not loading a full cargo (Abbot, 286); but the goods of the charterer may be detained, not only for the actual freight of these goods, but for a sum agreed to be paid for the use and hire of the ship (Faith, *ut sup.*).

It will be unnecessary to trouble you with the few special cases, in which, from the very peculiar terms of the charter-party, this right of lien was held to have been excluded; because, the exercise of this right is generally superseded by the special mode or manner in which it has been agreed the freight should be paid, the same as in the case of other liens, which may be excluded by the special custom of trade, or by the special agreement for payment at a future period. As, for instance, where the freight is to be paid for by approved bills, at a certain date, in which event, the delivery of the cargo, and the granting of the bills, must take place at the same time,—or, rather, the bills should be placed in the hands of some confidential third party, to await the delivery (Yates *v.* Railston, 8 Taunt., 293; Yates *v.* Magnall, ib., 302), unless it appear from the charter-party or bills of lading, that the bills for the freight were to be granted before the delivery of the cargo (Campion *v.* Colvin, 3 Bing. N. C., 17); and, when payment is to be made by bills, deli-

very of the goods cannot be required, without, at the same time, tendering the bills (Tate *v.* Meek, 7 Taunt., 280). But if a bill has been taken and negotiated, this will be held to be a discharge of the right of detention, and an implied consent to the merchants having the goods (Horncastle *v.* Farren, 3 B. A., 497). If, however, bills have been taken, and these are dishonoured,—should any part of the cargo remain in the master's hands undelivered, he is entitled to exercise his right of lien over it (Abbot, 299).

Although the merchant can insist upon an inspection of the goods, before taking delivery of them, yet, if these goods are damaged, and the merchant takes delivery of them, without judicial authority, and without informing the master that he will not pay the freight, he will be liable for it, and will not be entitled to plead the damage sustained by the cargo, against a demand for the freight (Abbot, 427). The remedy of the shipper, for the damages done to the cargo, if these damages have occurred through the fault or misconduct of the master, or where they arise from a breach of the charter-party, must be by a separate action against the owners.

But the cargo may be so much damaged, as not to be worth the freight: can the merchant, in that case, abandon the cargo for the freight? This is a difficult question to answer, and no case of the kind has occurred for decision in this country. It has been said, by high authority, that,—"As to the value of the goods, it is nothing to the master whether the goods are spoiled or not, provided the merchant takes them; it is enough if the master has carried them, for, by doing so, he has earned his freight, and the merchant shall be obliged to take all that are saved, or none;—he shall not take some and abandon the rest, and so pick and choose what he likes, —taking that which is not damaged, and leaving that which is spoiled or damaged. If he abandons, he is excused freight; and he may abandon all, though they are not all lost" (Lord Mansfield, in Luke *v.* Lyde, *ut sup.*). But the question of abandonment did not arise in that case,—and, as I have now said, no case has been decided in which the question of abandonment for freight has arisen, when the goods arrived at their port of destination. The true distinction would seem to be, that, where the goods have been damaged by the perils of the sea, or by their own natural decay, or by a principle of corruption inherent in themselves, without any negligence or blame imputable to the master or mariners, the merchant must take the goods, and cannot, by abandoning them, relieve himself from payment of the freight. But where there has been a natural possibility for the master to have prevented the damage, the merchant may abandon (Holt, 433), although this right never appears to have been claimed in this country (Abbot, 427).

Where there has been an agreement with the merchant, to load a certain quantity of goods, and he either does not load the goods at all, or does not load the full quantity contracted for, a claim of damages thence arises, called dead freight (Phillips *v.* Rodie, 15 East., 547). But this claim is not freight at all, and is only indemnification for the loss of the freight; and, where there is a charter-party, the penalty in it may be taken as the measure of the damages; or the owner may sue for damages generally, and, then, the actual loss sustained by the want of cargo, will be the extent of the damage (Harrison *v.* Wright, 13 East., 343). There is no lien upon the goods shipped, for this dead freight (Birley *v.* Gladstone, 3 M. S., 205).

It is always a stipulation in the bills of lading, that the party paying the freight, also pays "primage and average accustomed." The word "primage" is better known by the name of the master's hat-money, and means a small payment to the master, for his care and trouble, which he receives to his own use, unless he has otherwise agreed with his owners, and for which he can maintain action, although the freight has been separately adjusted, unless, by the agreement between the owner and the shipper, this claim has been excluded. The word "average," here used, refers to several petty charges, such as towing, beaconage, &c., which are to be borne, partly by the ship, and partly by the cargo. These two payments are regulated by the usage in different trades and voyages, and are often exchanged for a fixed sum, or a certain per centage on the freight (Abbot, 404; Holt, 420).—I am, &c.,

LETTER XIX.

On arrival at port of destination, delivery of documents to consular officer or customs officer—Penalty on master for failure—Disposal of money, clothes, and effects of deceased seaman or apprentice—Entry in official log-book as to—Delivery and payment to shipping-master at port of destination in United Kingdom—If ship touches at foreign port or a port in her Majesty's dominions abroad, report to British consular officer, &c.—Account to be delivered to Board of Trade, or to British consular officer, &c.—Certificate from shipping-master—Penalties on master—Money, &c., recoverable from owner under same penalty—Seaman or apprentice dying abroad leaving money or effects *not* on board his ship—Unpaid wages or effects of seaman dying in United Kingdom—Disposal of monies and effects not exceeding in value £50—When above £50—Wills of seamen or apprentices—How to be made—Form of—Wrongfully forcing on shore and leaving behind any seaman or apprentice—On disposal of British ship out of her Majesty's dominions, duty of master to seamen—Passage home—On failure of master, recovery of expenses—Discharge of seaman or apprentice in British possession abroad—At any place out of her Majesty's dominions—Leaving behind a seaman or apprentice in any British possession abroad—At any place out of her Majesty's dominions—Sanctions or certificates required—Account and payment of wages—Payment of wages, to whom to be made—Governors, &c., to provide for subsistence of seamen or apprentices discharged or left behind abroad—And to send them home—Passage and subsistence home—Payment for—Penalty on master who fails—Recovery of wages and expenses of seaman or apprentice discharged or left behind contrary to Act—Entering into Royal Navy—Delivery of clothes and effects, and payment of wages—Repayment of wages advanced—Repayment of excess of wages paid to substitute—Power of making complaint—Naval courts on high seas and abroad—Crimes committed on the high seas and abroad—Rules to be observed as to—Penalty on master refusing to receive and afford passage and subsistence to offender and witnesses—Inquiries in cases of death on board foreign-going ships.

Gentlemen,—Having arrived at a port of call or at your port of destination, and duly reported your ship, your first duty, under the Merchant Shipping Act, is, to deliver certain documents to the British consular officer or chief officer of customs at that port.

The Act requires, that whenever a ship, in whatever part of her Majesty's dominions she is registered (except ships whose business, for the time being, is to carry passengers), arrives at any foreign port where there is a British consular officer, or at any port in a British possession abroad, and remains at that port for forty-eight hours, the master must, within forty-eight hours of the ship's arrival, deliver to the consular officer or to the chief officer of customs there, the agreement with his crew, and also all indentures and assignments of apprenticeships,—or, in the case of a ship belonging to a British possession, such of these documents as she is provided with. This officer keeps these documents during the ship's stay in that port: and, in cases where any indorsements upon the agreement are required, he must make the same, and he returns the documents so delivered to him to the master, a reasonable time before his departure,—with a certificate indorsed on the agreement, stating when the same were

respectively delivered and returned. But if it appears that the required forms have been neglected,—or that the existing laws have been transgressed,—this officer makes an indorsement to that effect on the agreement, and forthwith transmits a copy of this indorsement, with the fullest information he can collect regarding the neglect or transgression, to the Registrar-General of Seamen.

And should the master fail to deliver any such document as aforesaid, he incurs, for every such default, a penalty not exceeding £20; and in a prosecution for this penalty, it lies upon the master, either to produce the certificate from the consular officer or customs officer, as before required,—or to prove that he duly obtained the same,—or that it was impracticable for him to do so (§ 279).

It may be proper, in this place, to take a review of those provisions of the Merchant Shipping Act which relate to those matters that may occur during a voyage, or at a home port, or at a port abroad. In doing so, it is unnecessary to notice the 177th section (which only relates to the United Kingdom) further than to say, that by it facilities are given, under the directions of the Board of Trade, for remitting the wages and other monies of seamen and apprentices to their relatives or other persons, by means of money-orders issued by shipping masters,—an object which is very easily accomplished.

In the first place, should any of your crew die, let us see what you have to do with his wages and effects,—whether the ship be foreign-going or in the home trade, provided she be employed on a voyage which is to terminate in the United Kingdom. Should any of the seamen or apprentices belonging to or sent home in a British ship, die during the voyage which is so to terminate,—you, as master, must take charge of all the money, clothes, and effects which he leaves on board, and, if you think fit, you can cause all or any of these clothes and effects to be sold by auction at the mast or other public auction. Thereupon, you are to make and sign an entry in the *official* log-book, containing the following particulars:—

(1.) A statement of the amount of the money, and a description of the effects so left by the deceased:—

(2.) In the case of a sale, a description of each article sold, and the sum received for each:—

(3.) A statement of the sum due to the deceased as wages, and the total amount of the deductions (if any) to be made therefrom. And this entry in the official log-book must be attested by the mate and by one of the crew (§ 194).

In the foregoing cases, the following rules must be observed:—

(1.) If the ship proceeds at once to any port in the United Kingdom, without touching on the way *at any foreign port*,—within forty-eight hours after your arrival, you must deliver any of the

foresaid effects remaining unsold, and pay any money you have taken charge of or received from a sale of any effects as aforesaid, as well as the balance of wages due to the deceased, to the shipping master at the ship's port of destination in the United Kingdom :—

(2.) If the ship touches and remains for forty-eight hours at some *foreign* port or at some port in her Majesty's dominions *abroad*, before coming to any port in the United Kingdom, you must report the case to the British consular officer, or to the officer of customs there, as the case may be,—and you must give to this officer any information he requires, as to the destination of the ship, and probable length of the voyage. Thereupon, he can require the effects, money, and wages to be delivered and paid to him, if he considers it expedient to do so,—and, upon this delivery and payment, he gives you a receipt, which you must produce to the shipping master at your port of destination in the United Kingdom, within forty-eight hours after your arrival there. In such a case, the officer must indorse and certify upon the agreement, with your crew, those particulars with respect to this payment and delivery which the Board of Trade requires :—

(3.) If this consular officer or customs officer should not require payment and delivery to be made to him as aforesaid,—you, as master, must then take charge of the said effects, money, and wages ; and, within forty-eight hours after arrival at your port of destination in the United Kingdom, you must deliver and pay the same to the shipping master there :—

(4.) In all cases in which a seaman or apprentice dies during the progress of a voyage or engagement, you must deliver to the Board of Trade, or to the British consular officer, or officer of customs, or shipping master as aforesaid, an account, in the form required by them, of the effects, money, and wages so to be delivered and paid ; and no deductions claimed in this account can be allowed, unless verified by an entry in the official log-book (if there is one), as before required (§ 194), and also by such other vouchers as may be reasonably required by the Board, or by the officer or shipping master to whom the account is rendered :—

(5.) Upon due compliance with such of the foregoing provisions as relate to acts to be done at the port of destination in the United Kingdom,—the shipping master grants you a certificate to that effect ; and no officer of customs can clear inwards any foreign-going ship, without the production of this certificate (§ 195).

Now, here are the punishments and penalties consequent on your failure to comply with any of the provisions in the two sections before narrated. If you fail to take the charge of the money or other effects of a seaman or apprentice *dying during the voyage*,—or to make the

entries in respect thereof,—or to procure the attestation to these entries,—as directed by § 194;—or to make the payment or delivery of any money, effects, or wages of a seaman or apprentice *dying during the voyage*,—or to give the account in respect thereof,—both as required and directed by § 195;—then you become accountable to the Board of Trade for the money, wages, and effects of that seaman or apprentice so dying, and you must pay and deliver the same accordingly,—and, in addition, you incur, for every such offence, a penalty not exceeding treble the value of the money or effects not accounted for,—or, if this value is not ascertained, not exceeding £50 (§ 196).

If such money, wages, and effects are not duly paid, delivered, or accounted for *by the master* as now mentioned, *the owner* must pay, deliver, and account for the same, and the money and wages, and the value of the effects are recoverable from the owner accordingly; and if he fails to account for and pay the same, he incurs the same penalty as the master for the like offence (*ut sup.*), in addition also to his liability for the said money and value. All money, wages, and effects of a seaman or apprentice dying during a voyage are recoverable in the same courts and by the same modes of procedure by which seamen are entitled to recover the wages due them (§ 196).

Then, again, if a seaman or apprentice during a voyage dies *abroad*, at any place either in or out of her Majesty's dominions, leaving any money or effects *not* on board his ship,—the chief officer of customs or British consular officer at or nearest to the place, claims and takes charge of this money or these effects. If this officer thinks fit, he can sell all or any of these effects, or any effects of a deceased seaman or apprentice which have been delivered to him under the second proviso of § 195 *ut supra*; and he must remit to the Paymaster-General,—quarterly or at such other times as the Board of Trade directs,—all monies belonging to,—or arising from the sale of the effects of,—or paid as the wages of deceased seamen or apprentices, which have come to his hands in manner above mentioned,—and he must render such accounts in respect thereof, as the Board requires (§ 197).

And whenever a seaman or apprentice dies *in the United Kingdom*, and is, *at the time of his death*, entitled to claim from the master or owner of the ship in which he has served, any unpaid wages or effects,—the master or owner must pay and deliver or account for these wages and effects to the shipping master at the port where the seaman or apprentice was discharged, or was to have been discharged, or to the Board of Trade, or as the Board directs (§ 198).

If the money and effects of a deceased seaman or apprentice, which have been paid, remitted, or delivered to the Board of Trade

or its agents (including the monies received for any part of the effects sold before delivery to or by directions of the Board), do not exceed in value the sum of £50,—then,—under the provisions to be immediately mentioned, and subject to all deductions for such expenses relating to the seaman or apprentice, or of his money and effects, as the Board of Trade allows,—if the Board thinks fit it can pay and deliver that money and these effects,—either to any claimants who prove to the satisfaction of the Board,—that they are his widow or children,—or entitled to the effects of the deceased under his will, if there be one,—or under the statutes for the distribution of the effects of intestates,—or under any other statute,—or at common law,—or that they are entitled to procure probate or take out letters of administration or confirmation, although no probate or letters of administration or confirmation be taken out,—and, by this payment and delivery, the Board is discharged from all further liability in respect of the money and effects so delivered;—or, if the Board thinks fit, it can require probate,—or letters of administration,—or confirmation to be taken out; and, thereupon, the Board pays and delivers the money and effects to the legal personal representatives of the deceased.

But if the money and effects exceed in value the sum of £50,—then, subject to the said provisions and to deduction of all expenses, the Board of Trade pays and delivers the same to the legal personal representatives of the deceased (§ 199).

The foregoing enactment relates, more particularly, to the disposal by the Board of Trade of the money and effects of a seaman or apprentice who dies without a will;—but the seaman or apprentice may have left a will, and that will must be in a certain form, and the Board of Trade has certain powers, according to where that will was made. Accordingly, it is in the discretion of the Board to refuse to pay or deliver any such wages or effects to any person claiming to be entitled thereto, under a will *made on board ship*, unless that will is in writing and is *signed* or *acknowledged* by the testator in presence of the master or first or only mate of the ship, and is attested by the master or mate. And the Board can also, in its discretion, refuse to pay or deliver any wages or effects as aforesaid, to any person not *being related to the testator by blood or marriage*, who claims to be entitled thereto under a will *made elsewhere than on board ship*,—unless this will is in writing, and has been signed or acknowledged by the testator in presence of two witnesses,—one of whom must be some shipping master,—or some minister or officiating minister or curate of the place where the same was made,—or, in a place where there are no such persons, some justice of the peace,—or some British consular officer,—or some officer of customs,—and the will is to be attested by these witnesses (§ 200).

The first part of this section applies, as you will observe, to a seaman's will *made on board ship*, which must be in writing, and must be signed or *acknowledged* by the seaman in presence of you, as master, or of your first or only mate, and you or he subscribe your or his name to the will, adding the word "witness" to the signature. When the seaman can subscribe his own name, then the course is plain by causing him to do so; but say, that he cannot write from ignorance of letters or from illness,—how is he to "acknowledge" his will in presence of you or your mate? This word plainly implies, that the will should be audibly and distinctly read over to him, and that he should intimate his consent to it by making a mark or cross at the bottom, round which you write in the following form—A. $\overset{\text{his}}{\underset{\text{mark.}}{\times}}$ B., and subscribe as witness to it.

This has reference to the proper manner of *executing* a will made on board ship; but how is the will itself to be made? It is not to be expected that you, or your mate, can have a proper technical knowledge of the form of a will, so as to prepare one on an emergency; and it is not to be anticipated that a seaman will have the foresight to make a will and leave it at home, although his doing so would, in the event of his death, save both trouble and expense. As, therefore, it may be necessary for you, or your mate, to write out a will for some of your seamen, here is a form which will suit all ordinary purposes:—

"I, A. B., seaman on board the ship , of , do hereby legate and bequeath to C. D., (*his wife or child, or his father or mother, or other person, as the case may be*), the whole monies, means, and effects, wherever situated, which shall belong to me at the time of my death; with power to the said C. D., whom I hereby nominate and appoint to be my executor, to take possession of, intromit with, and dispose of said monies, means, and effects, under the burden of paying all my just and lawful debts; and this, my last will, I have subscribed (*or set my mark to*), on board said ship, on her voyage from to , this day of eighteen hundred and fifty , before E. F., the master, (*or the first or only mate*), of the said ship.

(Signed) A. B. or A. $\overset{\text{his}}{\underset{\text{mark.}}{\times}}$ B.

E. F., master or mate of the ship ,
of , *Witness.*"

This form,—written on plain paper,—will do for a will made by a seaman on board his ship; but a seaman can make a will in favour of any person to whom *he is related* by blood or marriage, provided

that will is in the ordinary legal form of the place where it is made, and that place is *not* on board ship. For the second part of the section above referred to, leaves it in the discretion of the Board of Trade to pay or deliver such wages or effects to any person *not related* to the testator,—the seaman,—*by blood or marriage*, who claims to be entitled thereto under a will *made elsewhere than on board ship*, unless that will is in writing, and has been acknowledged in presence of the parties before mentioned, and is attested by them as witnesses. So that it is only where the will of a seaman is made *on board ship*,—or in favour of some person *not related to him* by blood or marriage,—that the statutory directions require to be attended to.

The foregoing are the enactments of the Merchant Shipping Act, as to the wages and effects of deceased seamen or apprentices, in so far, at least, as you require to attend to them:—let us now proceed to the occurrences of leaving seamen abroad,—the duties incumbent upon you in such cases,—and the punishments and penalties imposed upon you for the breach or neglect of these duties.

The first part of this division of the Act, to which I would call your attention, is the 206th section, which enacts, that if the master, *or any other person belonging to a British ship*, wrongfully forces on shore and leaves behind, or otherwise wilfully and wrongfully leaves behind, in any place, on shore or at sea, *in or out of her Majesty's dominions*, any seaman or apprentice belonging to his ship, before the completion of the voyage, for which that person was engaged,—or the return of the ship to the United Kingdom,—he is, for each such offence, deemed guilty of a misdemeanour (§ 206).

But, whenever a British ship is transferred or disposed of at any place *out of her Majesty's dominions*, and any seaman or apprentice belonging to her does not,—in the presence of a British consular officer,—or if there is not one there, in the presence of one or more respectable British merchants residing at the place, and not interested in that ship,—signify his consent *in writing* to complete the voyage, if continued,—and whenever the service of a seaman or apprentice belonging to a British ship terminates at any place *out of her Majesty's dominions*,—in these cases, the master must give to each such seaman or apprentice,—1. A certificate in the usual form sanctioned by the Board of Trade, and specifying the period of his service, and the time and place of his discharge:—2. If he has retained the certificate of his certified mate, he must return his certificate to him:—and, 3. Besides paying the wages to which the seaman or apprentice is entitled,—the master must either,—(1). Provide him with adequate employment on board some other British ship bound to the port in her Majesty's dominions at which he was originally shipped,—or to such other port in the United Kingdom as he agrees to,—

or, 2. Furnish the means of sending him back to such port,—or, 3. Provide him with a passage home,—or, 4. Deposit with the consular officer, or merchant or merchants, such a sum as is deemed sufficient by him or them to defray the expenses of his subsistence and passage home. The consular officer or merchants indorse upon the ship's agreement the particulars of this payment, provision, or deposit (§ 205).

If the master refuses or neglects to comply with the foregoing requirements, and if the last mentioned expenses are defrayed by the consular officer, or by any other person, these expenses are a charge upon the ship to which the seaman or apprentice belongs (unless he has been guilty of barratry), and upon the owners thereof for the time being, and can be recovered against the owners, with costs, at the suit of the consular officer, or other person defraying these expenses; or if the seaman or apprentice has defrayed these expenses himself, he can recover them as wages due to him (§ 205).

And in order to deter masters from improperly discharging seamen, or leaving them behind abroad, the Merchant Shipping Act enacts, that if the master of a British ship does any of the acts now to be mentioned, he, for each such default, is deemed guilty of a misdemeanour, viz.—1. If the master discharges a seaman or apprentice in any place situate *in any British possession abroad* (except the possession in which he was engaged), without previously obtaining the sanction in writing, indorsed on the agreement, of some public shipping master, or other officer, duly appointed by the local government in that behalf,—or,—in the absence of that functionary, —of the chief officer of customs resident at or near the place where the discharge takes place:—or, 2. If he discharges a seaman or apprentice at any place *out of her Majesty's dominions*, without previously obtaining the sanction, indorsed as before, of the British consular officer there, or, in his absence, of two respectable merchants resident there;—and, 3. Leaves behind a seaman or apprentice at any place situate *in any British possession abroad*, on any ground whatever, without previously obtaining a certificate in writing, indorsed as before, from a public shipping master, &c., stating the fact, and the cause thereof,—whether that cause be unfitness or inability to proceed to sea, or desertion, or disappearance,—or, 4. Leaves behind a seaman or apprentice at any place *out of her Majesty's dominions*, on shore or at sea, on any ground whatever, without previously obtaining the certificate, indorsed in the manner and to the effect already mentioned, of the British consular officer there,—or, in his absence, of two respectable merchants, if there is any such at or near the place where the ship then is.

The before named functionaries must, and the merchants may,

examine, in a summary manner, into the grounds of any proposed discharge, or into the allegation of a seaman's or apprentice's unfitness or inability, desertion, or disappearance, and for that purpose, they can, if they think fit, administer oaths, and grant or refuse their sanction or certificate as appears to them to be just (§ 207). It is incumbent upon the person charged with a breach of any of the foregoing provisions, either to produce the required sanction or certificate,—or to prove that he had obtained the same previously to his having so discharged or left behind that seaman or apprentice,—or that it was impracticable for him to obtain this sanction or certificate (§ 208).

When the master of a British ship leaves a seaman or apprentice on shore at any place abroad, in or out of her Majesty's dominions, under the before mentioned certificate of his unfitness or inability to proceed on the voyage,—he must deliver to one of the functionaries before referred to,—or, in his absence,—to the merchants by whom the certificate is signed,—or to one respectable merchant, if there is only one resident at the place,—a full and true account of the wages due to the seaman or apprentice who has been so left behind; and this account, when delivered to a consular officer, must be in duplicate, and the master must pay the wages so due, either in money, or by bill drawn upon his owners. When a bill is so drawn, the functionary, merchants or merchant, have to certify, by indorsement thereon, that the same is drawn for money due on account of a seaman's wages, and to indorse upon the ship's agreement the amount for which the bill is drawn, with such further particulars as the Board of Trade requires. The master who refuses or neglects to deliver a full account of these wages, and to pay the amount thereof, in money or by bill, as now mentioned,—is liable, for every such offence or default, to a penalty not exceeding £10, in addition to the payment of the wages; and, if the master delivers a false account of the wages so due, he incurs,—for every such offence, and in addition to the payment of the wages,—a penalty not exceeding £20 (§ 209).

The payment of wages thus made, whether by bill or in money, must, if made in a British possession, be made to the seaman or apprentice himself,—and if made out of her Majesty's dominions, be made to the consular officer, who, if satisfied with the account, indorses on one of the duplicates of the account a receipt for the amount paid or bill delivered, and returns the same to the master, and, within forty-eight hours after the master's return to his port of destination in the United Kingdom, he must deliver the same to the shipping master there. The consular officer retains the other duplicate of this account, and, if the seaman or apprentice subsequently obtains employment at, or otherwise quits the port, he deducts out

of the sum received by him, any expenses which have been incurred by him in respect of the subsistence of the seaman or apprentice under the provisions of the Merchant Shipping Act,—except such expenses as by §§ 228, 229, the master or owner is required to pay, —and the consular officer pays the remainder of the wages to the seaman or apprentice, and delivers to him an account of the sums so received and expended on his behalf. Should the seaman or apprentice die before his ship quits the port, the consular officer deals with the same in the manner specified in § 197; and if the seaman or apprentice is sent home at the public expense, he accounts for the amount received to the Board of Trade. After deducting any expenses which have been duly incurred in respect of that seaman or apprentice, except such as the master or owner is required to pay as above, the amount so accounted for to the Board of Trade is dealt with as wages due to a deceased seaman or apprentice, and is paid accordingly (§ 210).

The governors, consular officers, and other officers of her Majesty in foreign countries, must,—and in all places where there are no such governors or officers, any two resident British merchants may, —provide for the subsistence of all seamen or apprentices,—whether subjects of her Majesty or foreigners,—who have been shipwrecked, discharged, or left behind at any place abroad,—whether from a ship employed in the merchant service,—or from any of her Majesty's ships,—or who have been engaged by any person acting either as principal or agent, to serve in any ship belonging to any foreign power or to the subject of any foreign state, and who are in distress in any place abroad,—until such time as the said governors, officers, or merchants are able to provide them with a passage home. For this purpose, the governor, &c., can cause these seamen and apprentices to be put on board some ship belonging to any subject of her Majesty bound to any port of the United Kingdom, or to the British possession to which they belong (as the case requires), which is in want of men to make up her complement; and failing any such ship, he must provide them with a passage home, as soon as possible, in some ship belonging to a subject of her Majesty, bound as already mentioned. He must also indorse on the agreement of the ship on board of which any seaman is so taken or sent, the name of every person so sent on board thereof, with such particulars concerning the case as the Board of Trade requires, and there is allowed for the subsistence of that seaman or apprentice such a sum per day as the Board of Trade appoint,—the amount of which is paid out of the monies applicable to the relief of distressed British seamen, on production of the bills of disbursements with proper vouchers (§ 211; 18 & 19 Vict., c. 91, § 16).

The master of every British ship so bound as aforesaid, must receive and afford a passage and subsistence to all seamen and apprentices whom he is reqnired to take on board his ship, not exceeding one for every 50 tons burthen, under the foregoing provision, and, duriug the passage, he must provide every such seaman or apprentice with a proper berth or sleeping-place, effectually protected against sea and weather (§ 212). It may be here remarked in passing, that every seaman or apprentice, whom the master is thus compelled to take on board and convey, must be subject, so long as he remains in the ship, to the same laws and regulations for preserving discipline, and to the same penalties and punishments for offences constituting or tending to a breach of discipline, to which he would be subject if he were a member of the crew (§ 245).

And in order to obtain compensation for the passage and snbsistence of such seamen or apprentices whom he is required to take on board his ship,—on production of a certificate, signed by the governor, consular officer, or merchants, by whose directions the seamen or apprentices were received on board,—specifying the nnmber and names of these seamen and apprentices, and the time when each of them was respectively received on board,—and on a declaration made by the master before a justice, and verified by the registrar-general,—stating the number of days during which each seaman or apprentice received subsistence and was provided for on board his ship,—and stating also the number of men and boys forming the complement of his crew,—and the number of seamen and apprentices employed on board his ship during that time,—and every variation (if any) of that nnmber,—the master is entitled to be paid as above mentioned, such sum per day as the Board of Trade appoints, in respect of the snbsistence and passage of every seaman so conveyed, subsisted, and provided for by him, exceeding the number wanted to make up the complement of his crew (§ 212).

If any person having charge of a ship fails or refuses to receive on board his ship,—or to give a passage home,—or subsistence to, —or to provide for,—any snch seaman or apprentice as now mentioned, contrary to the foregoing provisions,—he incurs a penalty not exceeding £100 for each seaman or apprentice, with respect to whom he makes such defanlt or refusal (§ 212).

But should a seaman or apprentice be discharged or left behind at any place out of the United Kingdom, *without full compliance on the part of the master with all the provisions before detailed*, and should he become distressed and be relieved under these provisions, —or should any subject of her Majesty, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to a foreign power, or to the subject of a foreign

state, become distressed and be relieved as aforesaid, the wages that may be due to that seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and burial, should he die abroad before reaching home, are a charge upon the ship to which he belonged, whether British or foreign. And, besides suing for any penalties that may have been incurred, the Board of Trade can sue in name of her Majesty, and recover these wages and expenses, with costs, either from the master of that ship, or from the owner for the time being,—or, in the case of an engagement for service in a foreign ship, from the master or owner, or the person by whom the engagement was made,—which sums are recoverable in the same manner and by the same form and process, in which wages due to the seaman would be recoverable by him (§ 213).

The statutory provisions, which have now been noticed in this letter, apply to the several cases of seamen being discharged or left behind at places abroad; but you are aware it frequently happens, that, in the course of a voyage, seamen will enter into the ships of the Royal Navy, and the Merchant Shipping Act provides for their doing so. It is enacted, that any seaman can leave his ship for the purpose of *forthwith* entering into the naval service of her Majesty, and his thus leaving his ship is not to be deemed a desertion therefrom, and does not render him liable to any punishment or forfeiture. All stipulations introduced into the agreement with the seaman, whereby any seaman is declared to incur any forfeiture or to be exposed to any loss in case he enters into her Majesty's naval service, are void, and the master or owner who causes any such stipulation to be so introduced incurs a penalty not exceeding £20 (§ 214).

Whenever a seaman, *without having previously committed any act amounting to and treated by the master as desertion*,* leaves his ship in order to enter into her Majesty's naval service, *and is received into that service*, the master must deliver to him all his clothes and effects on board his ship, and must pay the proportionate amount of his wages down to the time of this entry, subject to all just deductions. These wages are to be paid as follows:—The master must pay the same to the officer authorised to receive that seaman into her Majesty's service, either in money or by bill drawn upon the owner, and exempt from stamp duty, and payable at sight to the order of the accountant-general of the navy; and the officer's receipt is a sufficient discharge for the money and bill so given. And when a seaman leaves his ship in the manner and for the purpose now mentioned, if the master fails to deliver his clothes and effects, or to pay his wages as before required, he incurs a penalty not exceeding

* For what amounts to desertion, see Sects. 243 and 246, Letter VI.

£20, in addition to his liability to pay the wages and deliver the clothes and effects (§ 215).

Upon a seaman leaving his ship for the purpose of entering her Majesty's naval service,—should the owner or master of that ship shew to the satisfaction of the Admiralty that he has paid, or properly rendered himself liable to pay, an advance of wages to or on account of that seaman, and that he had not, at the time of quitting his ship, duly earned this advance by service therein, and in case of this liability to pay an advance of wages,—if the owner or master actually satisfy the same,—then the Admiralty can pay to that owner or master so much of his advance as has not been duly earned (§ 216).

If, in consequence of a seaman so leaving his ship *without the consent of the master or owner*, it becomes necessary for the safety and proper navigation of the ship, to engage a substitute or substitutes, and if the wages or other remuneration paid to the substitute or substitutes *for subsequent service*, exceed the wages or remuneration which would have been payable to the seaman himself under his agreement, for similar service,—the master or owner can apply to the Registrar of the High Court of Admiralty in England for a certificate authorising the repayment of this excess;—the application being in such a form, and accompanied by such documents and by such statements,—on oath or otherwise,—as the judge of the Admiralty Court from time to time directs (§ 217).

It is unnecessary to trouble you, as master, with the proceedings which may take place under such an application for repayment of sums so advanced,—as, although the application may be made by you or in your name,—it is more properly the duty and the interest of your owner to follow out that application; and, in either case, it will be found that it is more convenient to employ some correspondent in London to attend to any such matter, when it does occur, which it is believed is very seldom. Let us, therefore, proceed to a matter more important to you as master,—and that is, when a seaman has to make a complaint against you or your mates, or any member of your crew.

Then, in the first place, you must especially bear in mind, that if a seaman or apprentice, *whilst on board his ship*, *states to the master* that he desires to make a complaint to a Justice of Peace, or a consular officer, or a naval officer in command of any of her Majesty's ships, against the master or any of the crew,—if the ship is then at a place where there is a justice or any of the foresaid officers,—so soon as the service of the ship will permit,—and if the ship is not then at such a place,—so soon after her first arrival at such a place as the service of the ship will permit,—the master must allow that seaman

or apprentice to go ashore, or send him ashore in proper custody, so that he may be enabled to make his complaint; and in default of the master's doing so, he incurs a penalty not exceeding £10 (§ 232).

We will see, by and by, the occasions on which naval courts can be summoned on the high seas and abroad,—the constitution of these courts,—and the mode of procedure before them. A complaint can be made to such a court by one or more of the seamen belonging to a ship; and the court can exercise the same powers with regard to persons charged before it with the commission of offences *at sea or abroad*, as are given by the Merchant Shipping Act to British consular officers (*See infra*, § 268 *et seq.*). The naval court so summoned can try the master or any of the crew for all offences against the Merchant Shipping Act, competent to be tried summarily before two justices, and can inflict the same punishment. That court can discharge any seaman from his ship, and can decide any questions as to the wages, or fines, or forfeitures arising between any of the parties to the proceedings;—it can order the wages of any seaman so discharged, or any part of his wages, to be forfeited, and can direct the same,—either to be retained by way of compensation to the owner,—or to be paid in to the receipt of her Majesty's Exchequer in the same manner as other penalties and forfeitures;—and it can direct all or any of the costs incurred by the master or owner in procuring the imprisonment of any seaman or apprentice in a foreign port, or in his maintenance while so imprisoned, to be paid out of and deducted from his wages, whether then or subsequently earned (§ 263). All orders made by a naval court must, whenever practicable, be entered in the ship's official log-book, and signed by the president of the court. If the sentence of the court be one of imprisonment, it must be confirmed by the senior naval officer or consular officer present at the place, and the place of imprisonment must be approved of by him. And a copy of the sentence must be sent to the commander-in-chief or senior naval officer of the station (§ 18 and 19 Vict., c. 91, § 16).

The court also makes a report (signed by the president) to the Board of Trade containing (1.) a statement of the proceedings, with the order made by the court and a report of the evidence; and (2.) an account of the wages of any seaman or apprentice who is discharged from his ship by the court (§ 265).

The Merchant Shipping Act further provides for the trial of offenders, who are charged with having committed crimes on the high seas or abroad. It enacts, that all offences against *property or person* committed in or at any place, either *ashore or afloat*, out of her Majesty's dominions, by any master, seaman, or apprentice, who, at the time the offence is committed, is,—or within three months pre-

viously, has been employed in any British ship,—are deemed to be offences of the same nature respectively,—are liable to the same punishments respectively,—and are to be inquired of, heard, tried, determined, and adjudged in the same manner, and by the same courts, and in the same places, as if these offences had been committed within the jurisdiction of the Admiralty of England (§ 267).

The following rules are to be observed with respect to offences committed on the high seas, or abroad:—

1. Whenever a complaint is made to a British consular officer of any of the offences now mentioned, or of any offence on the high seas, having been committed by any master, seaman, or apprentice, belonging to a British ship,—the consular officer can inquire into the case upon oath,—and,—if the case so requires,—he can take any steps in his power, for the purpose of placing the offender under necessary restraint, and of sending him, as soon as practicable, in safe custody, to the United Kingdom, or to a British possession, in which there is a court capable of taking cognisance of the offence, in any ship belonging to her Majesty, or to any of her subjects, to be there proceeded against according to law:—

2. For this purpose, the consular officer can order the master of any ship belonging to any subject of her Majesty, bound to the United Kingdom, or to the British possessions, to receive and afford subsistence during the voyage, to such offender, and to the witnesses,—so that the master be not required to receive more than one offender for every 100 tons of his ship's registered tonnage, or more than one witness for every 50 tons of that tonnage; and the consular officer indorses upon the agreement of the ship, such particulars with respect to the offender or witnesses sent by her, as the Board of Trade requires:—

3. On his ship's arrival in the United Kingdom, or in the British possession, as aforesaid, the master must give the offender so committed to his charge, into the custody of some police-officer or constable, who takes the offender before a justice of peace, or other magistrate, empowered by law to deal with the matter, who proceeds the same as in cases of offences committed on the high seas:—

And, should any master,—when required by a British consular officer to receive and afford a passage and subsistence to an offender or witness,—not receive him and afford such a passage and subsistence,—or not deliver any offender committed to his charge, into the custody of some police-officer or constable, as before directed,—he incurs for each offence a penalty not exceeding £50 (§ 268).

Where a seaman, duly engaged for a specified voyage, is, during the course of that voyage, sent to England by the authority of a British consul, as a witness on a trial for an offence committed on

the high seas :—this operates as a dissolution of his agreement, and he cannot recover any wages subsequently to the period when he was sent to England (Melville *v.* De Wolfe, 1 Jur. N. S. 765).

Whenever any case of death happens on board a foreign-going ship,—on the arrival of that ship at the port where the crew is discharged ; the shipping master must inquire into the cause of that death, and he indorses on the list of the crew delivered to him in terms of § 273, an indorsement to the effect, either that the statement of the cause of death therein contained is, in his opinion, true or otherwise, as the result of the inquiry requires ; but if, in the course of this inquiry, it appears to him that the death has been caused by violence or other improper means, he either reports the matter to the Board of Trade,—or,—if the emergency of the case so requires,—he takes immediate steps for bringing the offender to justice (§ 269). You will recollect, that you must enter in the official log "every case of death happening on board, *and of the cause thereof;*" and that this entry must be signed,—not only by you and yonr mate, or some other of the crew,—but also by the surgeon or medical practitioner on board.

In all cases of desertion from a ship in any place abroad, the master must produce the entry of that desertion in the official log-book, to the person or persons, who are required to indorse on the agreement a certificate of the desertion.—I am, &c.

LETTER XX.

By whom and when naval court can be summoned—Constitution of that court—Powers to be exercised by it—Master superseded during voyage, and successor appointed—List of documents delivered to him to be entered in official log—Seamen discharged by court, and disposal of wages—Seamen deserting, &c., abroad—Proceedings against—Entries in official log—Engaging seamen abroad—Must be full complement on sailing from foreign port—Instances of sailing with incomplete crew—Rules for engaging seamen in British possession—At place out of her Majesty's dominions—Report of ship arriving in British possessions abroad—Goods prohibited or restricted to be imported into—Importation of sugar or rum—Certificates of origin—Forfeiture of articles of foreign manufacture imported into—Entering goods imported—Particulars of entry—Landing goods imported—Entry outwards—Certificate of clearance—Clearance of timber-laden ships—Regulations as to cargo—Importation from St John's, and certificate of clearance—Exportation to Newfoundland—Clearance of ship—Forfeiture of fishing certificate—Exportation of spirits or sugar from British possessions—Declaration by master—Certificate of production—Exportation of sugar or spirits produce of some other possession—Sugar shipped from British possession in East Indies—Wine exported from British possession abroad—Searching ships in British possessions in America—Condemnation of vessels, &c., seized or forfeited—Claim for by owner of—Bond given by—Prosecution for penalties or forfeitures—Application of—Requisites of taking in cargo at foreign port same as at home port—Engagement for freight entered into by master himself—Sailing from foreign port—Seaworthiness of ship—And conduct of voyage.

GENTLEMEN,—In the latter part of the preceding letter we have seen the powers of naval courts held for hearing complaints and investigating wrecks on the high seas or abroad; and it will be proper here to consider the mode of summoning and the constitution of these courts,—the duties which they have to perform,—and the powers committed to them for the performance of these duties.

The Merchant Shipping Act authorises any officer in command of any of her Majesty's ships on a foreign station, or, in his absence, any consular officer, to summon a court, termed a "Naval Court," in the following cases:—

(1.) Whenever a complaint, which appears to such officer to require immediate investigation, is made by the master of a British ship,—or by any certified mate,—or by one or more of the seamen belonging to such ship:—

(2.) Whenever the interest of the owner of a British ship, or of her cargo, appears to such officer to require it:—or,

(3.) Whenever any British ship is wrecked, or abandoned, or otherwise lost, at or near the place where such officer may be,—or whenever the crew or part of the crew of any British ship which has been wrecked, abandoned, or lost abroad, arrives at such place (§ 260).

This naval court must consist of not more than five and not less than three members,—of whom, if possible, one must be an officer in the naval service of her Majesty, not below the rank of lieutenant, —one a consular officer,—and one a master of a British merchant ship,—and the rest may be either officers in her Majesty's naval service,—masters of British merchant ships,—or British merchants. This naval court may include the naval or consular officer summoning the same, but it must not include the master or consignee of the ship to which the party or parties complaining or complained against may belong; and the naval or consular officer, if there is only one in the court,—or, if there is more than one, the naval or consular officer who is of the highest rank,—is the president of the court (§ 261).

As noticed in the preceding letter, this naval court hears and investigates the complaint brought before it, or the cause of the wreck or abandonment, as the case may be, and, for that purpose, can summon and compel the attendance of parties and witnesses,— and administer oaths,—and order production of documents,—and must conduct the investigation in such a manner as to give the person against whom a charge is made, an opportunity of making a defence (§ 262).

After hearing the case before it, this naval court can exercise the several powers already enumerated in the preceding letter; and, in particular, *if the court be unanimous* that the safety of the ship or crew, or the interest of the owner, *absolutely requires it*,—the court can supersede the master, and appoint another person to act in his stead, provided this appointment is made with the consent of the consignee of the ship, if then at the place (§ 263). If, during the progress of a voyage, the master is so superseded, or for any other reason quits the ship, and is succeeded in the command by some other person,—he must deliver to his successor the various documents relating to the navigation and to the crew thereof which are in his custody; and, in default, he incurs a penalty not exceeding £100. Immediately on assuming the command of the ship, the successor must enter in the official log a list of the documents so delivered to him (§ 259).

The naval court has also power to discharge any seaman from his ship, and to order the wages of the seaman so discharged, or any part of these wages, to be forfeited; and the court can direct the same either to be retained by way of compensation, or to be paid into the receipt of her Majesty's Exchequer, in the same manner as other penalties and forfeitures under the Merchant Shipping Act (§ 263). And an account of the wages of a seaman so discharged from his ship must be reported by the court to the Board of Trade (§ 265).

But seamen who have duly signed the ship's agreement, may desert or otherwise absent themselves from the ship while she is abroad; and the same enactments, which have been already referred to (LETTER II., p. 19), in regard to a seaman neglecting or refusing to join or to proceed to sea in, or absenting himself from his ship, apply equally to any such acts committed during the course of a voyage. It is enacted by § 246, that whenever, during the progress of a voyage, a seaman or apprentice neglects or refuses to join, or deserts from, or refuses to proceed to sea in the ship in which he has engaged to serve,—or is found otherwise absenting himself therefrom without leave,—the master, or any mate, or the owner, ship's-husband, or consignee, can,—*in any place in her Majesty's dominions*, with or without the assistance of the local police officers or constables,—*and also at any place out of her Majesty's dominions*,—if and so far as the laws in force at that place will permit,—apprehend him without first procuring a warrant, and *may* thereupon, in any case,—and *must*—in case the seaman or apprentice so requires, and it is practicable—convey him before some court capable of taking cognisance of the matter. For the purpose of conveying the seaman or apprentice before this court, he may be detained in custody for a period not exceeding twenty-four hours, or such shorter time as may be necessary,—or, if he does not so require,—or if there is no such court at or near the place,—then he can at once be conveyed on board (§ 246).

When a seaman or an apprentice is brought before a court on any of the grounds before mentioned,—if the master, or the owner or his agent, so requires,—the court can,—instead of committing the offender to prison,—cause him to be so conveyed on board for the purpose of proceeding on the voyage,—or can deliver him to the master or any of the mates,—or to the owner or his agent, to be by them so conveyed. In such case, the court can order any costs and expenses properly incurred by or on behalf of the master or owner, by reason of the offence, to be paid by the offender,—and, if necessary, to be deducted from any wages he has then earned, or may afterwards earn, by virtue of his then existing engagement (§ 247). And when the seaman or apprentice *is imprisoned* on any of the foresaid grounds,—or on the ground of his having committed any other breach of discipline,—and if during his imprisonment, and before his engagement is at an end, his services are required on board his ship,—any justice can,—at the request of the master, or of the owner or his agent,—cause that seaman or apprentice to be conveyed on board for the purpose of proceeding on the voyage,—or to be delivered to the master or any mate, or to the owner or his agent, to be by them so conveyed, notwithstanding the period for which he was sentenced to imprisonment has not terminated (§ 248).

You will, as a matter of necessity, attend to make the proper entries in the official log-book of any of the foregoing offences which may be committed by any of your crew, and for which it may be intended to prosecute, &c., in terms of § 282;—and, in all cases of *desertion* in any place abroad, you have to produce the entry of the desertion in the official log-book to the person or persons who have to indorse on the agreement a certificate of the desertion. Thereupon, such person or persons are to make and certify a copy of this entry, and also a copy of the certificate of desertion; and if this person is a public functionary, he must, and, in all other cases, you yourself, as master, must forthwith transmit these copies to the Registrar-General of Seamen (§ 249).

It is extremely probable that, owing to the death, desertion, or incapacity of some of your crew originally shipped, you may find a difficulty, at the foreign port, or in a port of a British possession abroad, in making up your complement with able-bodied seamen; but you ought on no account to sail from any such port, without having on board such a number of a crew as will be competent adequately to navigate the ship to her port of destination,—her having such a crew on board being, as I have already shewn you, an essential ingredient in a ship's seaworthiness. And, although in *time* policies there may be no implied warranty of seaworthiness at the time the policy attaches (Gibson *v.* Small, 4 H. L. Ca., 353), and although the underwriters are not discharged by the ship's sailing from an intermediate port without sufficient hands to work her (Jenking *v.* Heycock, 8. E. F. Mo., 351),—yet,—more especially where the insurance is from the port of lading abroad to the port of discharge in this country (as is the case with insurances on goods, and very frequently with insurances on freight also),—there can be no doubt that the ship must be seaworthy in all respects at the time the risk attaches,—and consequently, that she must be thus well and sufficiently manned for the whole voyage.

And to shew the consequences of sailing with a crew incomplete for the voyage, I may repeat the two cases which I have already referred to in treating of seaworthiness. In the one, the master was unable to engage at Cuba ten men, his proper complement, for Liverpool, but he sailed from Cuba with *eight* men for Liverpool, and *two* for Jamaica;—he proceeded to Jamaica, out of the ordinary track of the voyage,—landed the two men there, and took in other two,—and the vessel was lost on the voyage from Jamaica to Liverpool:—in an action on a policy of insurance, it was held, that if eight men were, at the outset, sufficient for the voyage, the touching at Jamaica was a deviation,—and that if eight men were not sufficient, the voyage had no commencement, the vessel not being seaworthy, in this

respect, when she sailed (Forshaw *v.* Chabert, 3 B. B., 158). And, in the other case, the action was on a policy on freight and goods, at and from Port Neuf to London, warranted to sail on or before the 28th October;—on the 26th, the vessel, with an incomplete crew for the voyage, dropped down from Port Neuf, and, on the 28th, reached Quebec, the nearest place where a clearance could be obtained, and there completed her crew;—on the 29th, she obtained her clearance, and sailed next day, and was lost:—it was held that the dropping down to Quebec was not a compliance with the warranty (Ridesdale *v.* Newenham, 3 M. S., 456).

As there are now no restrictions as to the national character of the seamen who may be engaged as sailors on board a British ship,—you are at liberty to make up your complement at a foreign port, according as you find men suitable for the voyage, provided they are ablebodied seamen, and that you engage them for the whole voyage, in terms of, and with the sanction required by, the Merchant Shipping Act.

The act requires that, when the master of a ship registered in the United Kingdom, engages any seaman in any British possession,—or, if the ship belongs to a British possession, engages any seaman in any *other* British possession,—if there is at the place where that seaman is engaged a shipping-master, or other officer duly appointed for shipping seamen,—the master must engage that seaman before him, and if there is no such shipping-master or officer, then before some officer of customs. The same rules, qualifications, and penalties, which apply to the engagement of seamen before shipping-masters in the United Kingdom, apply to engagements in a British possession; and upon each such engagement, the shipping-master or officer foresaid indorses upon the agreement an attestation, to the effect that the same has been signed in his presence, and otherwise made as required by the Merchant Shipping Act. If, in any case, this attestation is not made, the burden of proving that the seaman was thus duly engaged lies upon the master (§ 159).

When the master of a British ship engages any seaman at any place *out of* her Majesty's dominions, in which there is a British consular officer,—he must, before carrying that seaman to sea, procure the sanction of that consular officer, and engage the seaman before him; and the same rules as are applicable to the engagement of seamen before shipping masters in the United Kingdom, are applicable to engagments before consular officers. Upon this engagement, the consular officer indorses upon the agreement his sanction thereof, and an attestation, to the effect that the same has been signed in his presence, and otherwise made as required by the Merchant Shipping Act. The master, who engages a seaman in a place where there is

a consular officer otherwise than now mentioned, incurs a penalty not exceeding £20; and if in any case this indorsement and attestation is not made upon the agreement, the burden of proving the engagement to have been made as required by the act, lies upon the master (§ 160).

As to the trade of the British possessions abroad, the Customs Consolidation Act enacts, that the master of every ship arriving in any of the British possessions in America, whether laden or in ballast,—must come directly, and before bulk is broken, to the custom-house for the port or district where he arrives, and there make a report in writing to the proper officer of customs, in the same form and manner as is required on the arrival of a ship in the United Kingdom, so far as the same may be applicable; and if any goods are unladen from the ship before this report is made,—or if the master fails to make this report,—or if he makes an untrue report,—or does not truly answer the questions demanded of him,—he forfeits the sum of £50; and if any goods are not reported, these goods are forfeited (16 and 17 Vict., c. 107, § 164).

The following goods are prohibited or restricted to be imported into the British possessions in America, under the exceptions after mentioned:—

Gunpowder, ammunition, arms or utensils of war, except from the United Kingdom or any British possession, and base or counterfeit coin, are absolutely prohibited to be imported or brought,—either by sea or inland carriage or navigation,—into the British possessions in America and the Mauritius:—

Sugar (not being refined in bond in the United Kingdom) and molasses until 5th July 1854, and rum,—such sugar, molasses, and rum being the produce or manufacture of any British possession within the limits of the East India Company's charter (except as after mentioned), or being of foreign produce or manufacture,—are prohibited to be imported or brought into any of the British possessions in the continent of South America or in the West Indies (the Bahama or Bermuda Islands and the Bay Islands (18 and 19 Vict., c. 96, § 17) not included), or into the Mauritius, except to be warehoused for exportation only, and can also, by her Majesty's order in council, be prohibited to be imported into the Bahama and Bermuda Islands. If any goods are imported or brought into any of the British possessions in America or the Mauritius contrary to the foregoing enactment, the same are forfeited (16 and 17 Vict., c. 107, § 159).

But it is lawful to import into any British possessions in the West Indies and South America, and into the Mauritius, any sugar or rum the produce of any British possession within the limits of the East India Company's charter, into which sugar or rum the produce of any

foreign country, or of any British possession into which foreign sugar or rum may be legally imported, has been prohibited. But no such sugar or rum can be so entered, unless the master of the importing ship delivers to the proper officer of customs a *certificate of origin* under the hand of the proper officer at the place where the same has been taken on board,—stating the name of the district in which that sugar or rum was produced,—the quantity and quality or strength thereof,—the number and denomination of the packages containing the same,—and the name of the ship in which they were laden, and of the master thereof, and of the officer giving the certificate (§ 159).

The shipper of such sugar or rum must likewise certify, that there had been produced a certificate, under the hand and seal of the collector or assistant collector of the land or customs revenue of the district within which that sugar or rum was produced, that it was the produce of such district,—and that the importation into such district of foreign sugar and rum, or sugar and rum the growth of any British possession into which any foreign sugar and rum can be legally imported, is prohibited; and the master must subscribe a declaration, that this certificate was received by him at the place where these goods were taken on board, and that they are the goods mentioned therein (§ 159).

If any articles of foreign manufacture, and any packages of these articles,—bearing any names, brands, or marks being or purporting to be the names, brands, or marks of manufacturers resident in the United Kingdom,—are imported into any of the British possessions abroad, the same are forfeited (§ 161). And no goods or passengers can be carried from one part of any British possession in Asia, Africa, or America, to another part of the same possession, except in British ships (§ 163).

These are the regulations for importation into the British possessions in America and the Mauritius; and any person entering goods, must deliver to the proper officer a bill of entry thereof, containing the name of the ship and of the master, and of the place to or from which bound, and the particulars of the quality and quantity of the goods, and of the packages containing the same; and stating whether these goods be the produce of the British possessions in America or not. Thereupon, the proper officer grants his warrant for the lading or unlading of these goods (§ 166).

No goods can be laden or water-borne to be laden on board any ship, or unladen from any ship, in any of the British possessions in America, until due entry has been made of these goods, and warrant granted for the lading or unlading of the same (§ 167). And the master of every ship *bound from* any British possessions abroad, except the territories subject to the government of the Presidencies

of Bengal, Madras, and Bombay,—must deliver to the proper officer of customs, an entry outwards, under his hand, of his ship; and he must also subscribe and deliver to the same officer, a content of the cargo of his ship, if any,—or state that she is in ballast, as the case may be,—and he must answer such questions concerning the ship, —the cargo, if any,—and the voyage, as may be demanded of him, in the same manner, as nearly as may be, as is observed on the entry and departure of a ship from the United Kingdom. (See *ante*, Letter IV., p. 40). Thereupon, the proper officer gives to the master a certificate of the clearance of his ship for her intended voyage; and if the ship departs without this clearance,—or if the master delivers a false content,—or does not truly answer the questions demanded of him,—he forfeits the sum of £50 (§ 165). No goods must be stated in this certificate of clearance of the ship from any British possession, to be the produce of that possession, unless these goods have been so expressed in the entry outwards of the same; and all goods not expressly stated in this certificate of clearance to be the produce of such possession,—are,—at the place of importation in any other such possession,—or in the United Kingdom,— deemed to be of foreign production (§ 168).

Before any clearing officer permits any ship,—wholly or in part laden with timber or wood goods,—to clear out from any British port in North America, or in the settlement of Honduras,—for any port in the United Kingdom, at any time *after* the first day of September or *before* the first day of May in any year,—he must ascertain, that the whole of the cargo of such ship is below deck, and he gives the master a certificate to that effect; and no master of any ship so laden must sail from any of the ports foresaid, at any time as before mentioned, until he has obtained this certificate from the clearing officer (§ 170). No master of a ship in respect of which the foresaid certificate has been obtained, must place, or permit or cause to be placed, or to remain, upon or above the deck of his ship,—any part of the cargo thereof, until that ship has arrived at the port of her destination. But if he considers it necessary,—in consequence of springing a leak or of other damage received or apprehended during the voyage,—to remove any portion of the cargo upon deck, he can remove or cause to be removed upon the deck of his ship so much of the cargo, and can permit the same to remain there for such time, as he considers expedient. However, store spars or other articles necessary for the ship's use, are not to be taken to be cargo for the purposes of the Customs Consolidation Act (§ 171). And if the master of any ship for which a certificate is required as aforesaid, sails or attempts to sail without having obtained that certificate,—or places or permits, or causes to be

placed or to remain or be, upon or above the deck of his ship,—any part of the cargo thereof,—except in the cases already mentioned,—he forfeits and pays, for every offence, any sum not exceeding £100 (§ 172).

The produce of the forest in logs, lumber, timber, timber boards, staves, or shingles, or of agriculture, not being manufactured, grown on any of those parts of the State of Maine watered by the St John or by its tributaries,—and having free access into and through that river and its tributaries having their source within the State of Maine, to and from the seaport at the mouth of the St John, and to and round the falls of that river, either by boats, rafts, or other conveyance,—this produce is to be deemed and taken to be, and to be dealt with as the produce of the province of New Brunswick, so far as regards all laws relating to duties, navigation, and customs in force in the United Kingdom or in any of her Majesty's dominions. But, in all cases in which declarations and certificates of production or origin, and certificates of clearance would be required in respect of such produce, if it were the produce of New Brunswick,—similar declarations and certificates are required in respect of such produce, and these must state the same to be the produce of those parts of the State of Maine, which are watered by the river St John or by its tributaries (§ 174).

Whenever a ship is cleared out from any port in Newfoundland or in any other part of her Majesty's dominions, for the fisheries on the banks or coasts of Newfoundland or Labrador or the dependencies thereof,—without having on board an article of traffic,—except only such provisions, nets, tackle, and other things as are usually employed in and about the said fishery, and for the conduct and carrying on of the same,—the master of a ship so cleared out is entitled to demand from the principal officer of customs at the port of clearance, a certificate under his hand, that that ship has been specially cleared out for the Newfoundland fishery; and this certificate is in force for the fishing season for the year in which the same is granted, and no longer (§ 175).

Upon the first arrival of a ship having on board this certificate, in the colony of Newfoundland or its dependencies,—the master must make a report thereof to the principal officer of customs at that port, and every ship having this certificate which has been so reported, and being actually engaged in the fishery,—or in carrying coastwise any fish, oil, salt, provisions, or other necessaries to be landed or put on board any ship engaged in the fishery, for the purposes thereof,—that ship is exempt from all obligation to make an entry at, or obtain a clearance from, a custom house at Newfoundland upon arrival or departure from any of the ports or harbours of

the colony or its dependencies, during the continuance of the fishing season for which the certificate has been granted. But, previously to obtaining this clearance at the end of the fishing season for any voyage at any of these ports, the master must deliver up this certificate to the principal officer of customs of that port (§ 175).

In case any such ship has on board, during the time she is engaged in the fishery, any goods or merchandise whatsoever, other than fish, seals, oil made of fish or seals, salt, provisions, and other things, being the produce of or usually employed in the fishery,—that ship forfeits her fishing certificate, and thenceforth becomes and is subject and liable to all and the same rules, restrictions, and regulations as ships in general are subject or liable to (§ 175).

Before any spirits or sugar,—so long as any benefit attaches to the distinction,—can be shipped for exportation in any British possession in North America, or in the island of Mauritius, as being the produce of such possession or of that island,—the proprietor of the estate on which these goods were produced, or his known agent, must make and sign a declaration in writing before the proper officer of customs at the port of exportation, or before one of her Majesty's justices of the peace residing in or near the place where that estate is situated,—declaring that these goods are the produce of such an estate,—and this declaration must set forth the name of the estate, —the description and quantity of the goods,—the packages containing the same, with the marks and numbers thereon,—and the name of the person to whose charge at the place of shipment these goods are to be sent. And the person entering and shipping the goods must deliver this declaration to the proper officer of customs, and must also make and subscribe a declaration before him, that the goods which are to be shipped by virtue of that entry, are the same as are mentioned in the declaration first before mentioned (§ 176).

Before clearance, the master of the ship in which the goods are laden, must make and subscribe a declaration before the proper officer of customs, that the goods shipped by virtue of the foresaid entry, are the same as are mentioned and intended in the declaration first before mentioned, to the best of his knowledge and belief; and thereupon, the customs officer signs and gives to the master *a certificate of production*, stating that proof has been made in manner required by law, that the goods therein described are the produce of such a British possession or of the island of Mauritius,—and setting forth in this certificate, the name of the exporter,—of the exporting ship,—and of the master thereof,—and also the destination of the goods. If any spirits or sugar are imported into any British possession in America as being the produce of some other such posses-

sion or of the said island, without this certificate of production, the same are forfeited (§ 176).

Before any sugar or spirits,—so long as any benefit attaches to the distinction,—can be shipped for exportation in any British possession in America, *as being the produce of some other such possession*,—the person exporting the same must, in the entry outwards, state the place of production, and refer to the entry inwards and landing of these goods, and he must make and subscribe a declaration before the proper officer of customs to the identity of the same. Thereupon,—if these goods have been duly imported,—with a certificate of production, within twelve months prior to the shipping for exportation,—the proper officer of customs signs and gives to the master *a certificate of production*, founded upon and referring to the certificate of production under which these same goods had been so imported, and containing the like particulars, with the date of that importation (§ 177).

The shipper of any sugar the produce of some British possession within the limits of the East India Company's charter, about to be exported from any place in that possession,—can go before the chief officer of customs at that place,—or if there is no such officer, —before the principal officer of the place, or the judge or commercial resident of the district, and make and sign a declaration before him, that this sugar was really and truly the produce of such British possession, to the best of his knowledge and belief; and the officer, judge, or resident grants a certificate thereof,—stating therein the name of the ship in which the sugar is to be exported, and the destination thereof (§ 178). And the shipper of wine *the produce of any British possession abroad*, which is to be exported from thence, —can go before the chief officer of customs, and make and sign a declaration before him, that that was really and truly the produce of these British possessions; and the officer grants a certificate thereof,—stating therein the name of the ship in which the wine is to be exported, and the destination of the same (§ 179).

The officer of customs can go on board any ship in any port in any British possession *in America*, and rummage and search that ship for prohibited goods, and if there are any goods on board prohibited to be imported into such possession, they are forfeited (§ 181). All vessels, boats, goods, and other things, which may be seized or forfeited in or near any of the British possessions *abroad*, under the Customs Consolidation Act, or any act relating to the customs, are deemed and taken to be condemned, and can be dealt with in the manner directed by law, in respect to vessels, &c. seized and condemned for breach of any such act,—unless the person from whom such vessels, &c. have been seized,—or the owner of them,—

or some person authorised by him,—*within one month from the day of seizing the same,*—give notice in writing to the person or persons so seizing,—or to the chief officer of customs at the nearest port, that he claims or intends to claim them (§ 182). And if any goods or any ship or vessel are so seized as forfeited, and detained in any of the British possessions *in America*,—the judge or judges of any court having jurisdiction to try and determine such seizures,—can, —with consent of the chief officer of customs,—order delivery thereof, on security by bond, with two sufficient sureties,—to be first approved by that officer,—to answer double the value of the same in case of condemnation. This bond is taken to the use of her Majesty, in the name of the customs officer in whose custody the goods or the ship or vessel may be lodged, and it is delivered to and kept in the custody of that officer; and in case the goods or the ship or vessel be condemned, the value thereof must be paid into the hands of that officer, who thereupon cancels the bond (§ 185).

Whenever any penalty or forfeiture has been incurred in any of the British possessions abroad, under any of the customs acts,—this penalty or forfeiture can be sued for, prosecuted, recovered, and disposed of in the Court of Record or of Vice Admiralty, having jurisdiction in any British possession where the same have been incurred or forfeited. And in case there be no such court at that British possession, the forfeiture or penalty can be sued for, &c. in the Court of Record or of Vice Admiralty having jurisdiction in some British possession, near to that where the penalty or forfeiture has been incurred. These penalties and forfeitures are deemed to be sterling money of Great Britain and paid accordingly (§ 183). But no suit can be commenced for the recovery of any penalty or forfeiture in any of the British possessions abroad, under any of the customs acts, except in the name of some officer of the customs or navy, or other person employed on any duty or service relating to the customs, trade, or navigation in any of her Majesty's possessions abroad,—or of her Majesty's advocate or attorney-general for the place where the suit is to be commenced (§ 187).

All penalties and forfeitures recovered in any of the British possessions abroad, under any of the customs acts, are to be paid into the hands of the collector, comptroller, or other proper officer of the port or place where the same have been recovered, and are to be divided, paid, and applied as follows :—After deducting the charges of prosecution from the produce thereof,—one third of the net produce is paid to or for the use of her Majesty,—one third to the governor or commander-in-chief of the colony or plantation,—and the other third part to the seizor, informer, and prosecutor. But, of

penalties and forfeitures from seizures made at sea by the commanders or officers of her Majesty's ships of war duly authorised to make seizures,—first deducting the charges of prosecution from the gross produce,—one moiety is paid to and for the use of her Majesty,—and the other moiety to the seizor, informer, and prosecutor;—but subject to the distribution of the produce of seizures so made,—with regard to both moieties, that her Majesty may think fit to direct by order in council or by proclamation (§ 184).

These are the laws relative to the trade with the British possessions abroad; and, I need not say anything here, in addition to what I have already said, as to the manner of taking in and loading a cargo at a foreign port. You should bear in mind, that it is necessary to make protests, when requisite, in loading at a foreign, equally as in a home port, and even more so; and you ought to bring the instruments of protest along with you. In a previous letter, I have noticed some cases, in which vessels had been engaged to arrive at an outward port by a certain day, and, if a vessel should fail so to arrive, the merchant has the option of loading or not; but, here, suppose the merchant has furnished part of the agreed-on cargo, under a contract to load the vessel with an entire cargo, and he, however, is unable fully to load the vessel in terms of that contract,—what, then, should you do? If the merchant is in good credit, or otherwise responsible, and should he announce to you, that he is unable to load the full cargo agreed for, you ought not to sail with what has been loaded, unless under his express sanction, or, at least, without intimating to him, by a protest, that you are to sail by a day certain, with that part of the cargo which may be on board; and neither ought you to fill up the vessel with the goods of other parties, without his express consent. But, should there be a reasonable doubt of his credit or responsibility, there is little risk in filling up the vessel with the goods of others, so as to secure a full freight. The same remarks apply, where the merchant altogether fails to provide a cargo; and I should consider it an extreme case, indeed, which would warrant a master in returning with an empty ship, and trusting to the recovery of damages from the freighter (Abbot, 249).

But it may happen, that you yourself must enter into contracts or engagements for the employment of your vessel. Of course, where your owners themselves have made a special contract for that employment, you cannot, under any general or implied authority, annul, alter, or vary that contract, or substitute another in its place. In a general ship, you have an implied authority to bind your owners, in every contract relative to the usual employment of such a ship (Abbot, 128); and in regard to the employment of

the vessel, whether as a general ship or otherwise, the general rule is, that the owners are bound to the performance of every lawful contract made by you as the master, and in the usual course of that employment (Abbot, 124). In a foreign port, you are the only recognised representative of your owners, and, therefore, a charter-party made by you, in your own name, in such a port, and in the usual course of the ship's employment, and without fraud, is binding both upon yourself and your owners.

In sailing from a foreign port, the same as sailing from a home port, you must take care that your vessel is sufficiently seaworthy for the intended voyage. But there is a distinction as to seaworthiness, which it is necessary for you to keep in view. It cannot be expected, that, at the termination of a long outward voyage, and before the commencement of the homeward voyage, the vessel will be as well found, as at the commencement of the former; but still, she must be in a state of seaworthiness, commensurate to the risk of the homeward voyage. If an insurance has been effected on the voyage out and home, and the vessel has sustained some trifling damage in the outward voyage, from the ordinary perils of the sea, then the warranty of seaworthiness will not be broken; but if, in the outward voyage, the vessel has been so damaged by these perils, as to give rise even to a doubt as to her seaworthiness, at the termination of that voyage and previous to the commencement of the homeward voyage, then, if she can be repaired within a reasonable time,—with reasonable care,—and at small expense, there can be undoubtedly no question that she must be so, before sailing on the homeward voyage, so as to avoid all questions between your owners and the shippers, or the underwriters, as to the vessel's state of seaworthiness at the time of her sailing from the foreign port (Hollingworth *v.* Broderip; 7 A. E. 40). It is extremely foolish to hear shipmasters boast (as too many do) of having brought their vessel, when unseaworthy, across the Atlantic without repair, and of their having been complimented by the underwriters for bringing her safe into port; whereas, in place of this shewing their good seamanship, it only shews their ignorant or thoughtless foolhardiness, and it is what no prudent shipmaster ought, on any account, to do. But, again, if there is a separate insurance on the homeward voyage, independent altogether of the outward voyage, and the risk on which only commences at and from the outward port of lading,—in that case, the vessel must be in the same complete state of seaworthiness, before sailing, as she must be before leaving her home port; and I need not repeat what I have already said upon that head, in a previous letter.

I am, &c.

LETTER XXI.

Importation—Importing ship coming quickly up to place of mooring or unlading—Boarding of ships by customs officers—Fastening down hatchways—Opening locked places—Locking, marking, or sealing goods on board—Goods found concealed on board—Locking, marking, or sealing stores on board—Master's report of ship arriving from parts beyond seas—Particulars of delivery of bills of lading or copies—Penalty for failure—Or for alteration of stowage—Contents of package reported unknown—When goods deemed to be imported from any particular place—Unshipping imported goods—Time and place for doing so—In presence of customs officers—Forfeiture of goods unshipped, &c., contrary to regulations—Removal and landing of goods unshipped—Perfect entry or entry by bill of sight of goods imported—Time for landing after entry—Time for payment of duties on goods removed to Queen's warehouse—Sale of, for payment of duties—Application of produce—When quarantine has to be performed—When time for discharging specified in bills of lading—Entering and landing such goods by master or shipowner—If goods on board after expiry of time for landing, detention of ship by customs officers till payment of all expenses—Certificates of origin, use of on importation—Production of certificate of clearance—Entry of spirits or sugar produce of British possession—In America, &c.—Entry of sugar produce of East India Company's territories—Importation of sugar from Cape of Good Hope—Importation of goods from Channel Islands—Entry of wine produce of British possession—Complaints and disputes between masters or owners, &c., and customs officers, how settled—Mitigation of penalties—Importation of tobacco, cigars, or snuff.

GENTLEMEN,—Let us now assume that you are on the return voyage, and are approaching the shores of this country, laden with a cargo from parts beyond seas; and it is necessary, therefore, that you should be conversant with the customs laws and the powers of the customs officers in regard to importation.

It is enacted by the Customs Consolidation Act, that if a ship coming into the United Kingdom does not come as quickly up to the proper place of mooring or unlading as the nature of the port will admit,—and, in proceeding to that proper place, without touching at any other place,—does not bring-to at the stations appointed by the Commissioners of Customs for the customs officers boarding ships,—or if, after arriving at that proper place,—the ship shall remove from that place, except directly to some other proper place of mooring or unlading,—and with the knowledge of the proper customs officer,—or if the master of the ship on board of which any officer is stationed, neglects or refuses to provide every such officer, sufficient room under the deck in some part of the forecastle or steerage, for his bed or hammock;—the master of that ship forfeits the sum of £20 (16 and 17 Vict., c. 107, § 47).

The proper officers of customs can board any ship arriving at any port in the United Kingdom, and freely stay on board until all the goods laden therein are duly delivered from the same,—and these

officers must have free access to every part of the ship,—and they have power to fasten down hatchways or entrances to the hold,—to mark any goods before landing,—and to lock up, seal, mark, or otherwise secure any goods on board ship. And if any place or any box or chest is locked, and the keys are withheld, if the customs officers are of a degree superior to that of tidewaiter, they can open any such place, box, or chest in the best manner in their power,—but, if they are tidewaiters or only of that degree, they must send for their superior officer, who can open or cause to be opened any such place, box, or chest, in the best manner in his power. If any goods are found *concealed* on board any ship, these goods are forfeited; and if the customs officer place any lock, mark, or seal upon any goods on board, and if this lock, mark, or seal is wilfully opened, altered, or broken before the delivery of these goods,—or if any of these goods be secretly conveyed away,—or if, after the hatchways or entrances to the hold have been fastened down by the officer, these are opened,—the master forfeits the sum of £100. And if the proper officer of customs places any lock, mark, or seal upon *any stores on board* a ship or vessel arriving in the United Kingdom, and this lock, mark, or seal is wilfully opened, altered, or broken,—or if any of these stores are secretly conveyed away, either while the ship remains in the port at which she has so arrived, or before she shall have arrived at any other port in the United Kingdom,* to which she may then be about to proceed, the master forfeits the sum of £20 (§ 48).

Within twenty-four hours after the arrival of every ship, whether laden or in ballast, from ports beyond the seas at any port in the United Kingdom, and before bulk be broken, the master must make due report of his ship in the form given in the Act, or to the same effect, and containing the several particulars indicated therein or required thereby. You can obtain the printed forms at a ship-chandler's; and if the cargo has been laden at several places, you have to state the names of these places in the column I., headed, "Name or names of places where laden in order of time"—in the order of time in which the same were laden, opposite to the particulars of the goods so laden (§ 50). And if the master wilfully fails to make this report according to the particulars therein set forth,—so far as the same are applicable to the ship, cargo, and voyage,—or if the particulars or any of them contained in this report are false,—the master forfeits the sum of £100 (§ 51).

At the time of making this report, the master must, if required, deliver to the collector or comptroller the bill of lading, or a copy thereof, for every part of the cargo laden on board, and must answer all such questions relating to the ship, cargo, crew, and voyage, as

the collector or comptroller may put to him. In case of failnre or refusal to answer these questions, or to answer truly,—or to produce any such bill of lading or copy,—or if any such bill of lading or copy is false,—or if a bill of lading is nttered or produced by the master, and the goods expressed therein have not been really and truly shipped on board his ship,—or if any bill of lading uttered or prodnced by the master has not been signed by him, or any snch copy has not been received or made by him, previonsly to his leaving the place where the goods expressed in that bill of lading or copy were shipped,—or if, after the arrival of the ship within four leagnes of the coast of the United Kingdom, bnlk is broken,—or any alteration is made in the stowage of the cargo, so as to facilitate the nnlading of any part thereof,—or if any part is staved, destroyed, or thrown overboard, or any package opened, unless acconnted for to the satisfaction of the Commissioners of Cnstoms,—in every snch case the master forfeits the sum of £100 (§ 53).

If the contents of any package intended for exportation in the same ship, is reported by the master as being nnknown to him, the cnstoms officers can open and examine that package on board, or bring the same to the Queen's warehouse for that purpose,—and if there are found in that package any goods which are prohibited to be imported, these goods are forfeited, unless the Commissioners permit them to be exported (§ 54).

No goods are deemed to be imported from any particnlar place, nnless they are imported direct from that place, and have been there laden on board the importing ship, either as the first shipment of these goods, or after the same have been actually landed at that place (§ 43). And if it becomes necessary,—npon the first levying or repealing of any duty,—or the first permitting or prohibiting of any importation,—or at any other time,—or for any of the purposes of the customs acts,—to determine the precise time at which an importation of any goods is to be deemed to have had effect,—this time is deemed to be the time at which the ship importing these goods had actnally come within the limits of the port at which the ship must in due course be reported and the goods discharged; and if any qnestion arises upon the arrival of a ship, in respect of any charge or allowance upon that ship, exclnsive of cargo,—the time of this arrival is deemed to be the time at which the report of the ship has been or onght to have been made (§ 42).

Except diamonds, bnllion, lobsters, and fresh fish of British taking and imported in British ships, which may be landed without report or entry,—no goods mnst be nnshipped from any ship arriving from parts beyond the seas, or be landed or pnt on shore, on Sundays or holidays,—nor must they be so nnshipped, landed, or pnt on shore

on any other days, except between the hours of eight o'clock in the morning and four o'clock in the afternoon, from 1st March until 1st November, and between the hours of nine o'clock in the morning and four o'clock in the afternoon, from 1st November until 1st March, or during such other hours as may be appointed by the Commissioners, —nor must any goods be unshipped or landed unless in the presence or with the authority of the proper officer of customs,—nor must they be so landed except at some legal quay, wharf, or other place duly appointed for the landing of goods,—nor, after having been unshipped or put into any boat or craft to be landed, must these goods be transhipped or removed into any other boat or craft previously to their being landed, without the permission of the proper officer of customs. If any goods are unshipped, landed, transhipped, or removed contrary to this enactment, the same are forfeited; and if any goods are unshipped or removed for the purpose of being landed after due entry thereof,—these goods must be forthwith removed to and landed at the wharf, quay, or other place at which they are intended to be landed; and if not so removed and landed, the same are forfeited, together with the barge, lighter, boat, or other vessel employed in removing the same (§ 49).

It will be proper for you to know the time within which goods must be entered and landed after the arrival of the importing ship; and in regard to this, the Customs Consolidation Act enacts, that if, within fourteen days (exclusive of Sundays and holidays) after the arrival of the importing ship, the importer of any goods does not make perfect entry or entry by bill of sight of these goods,—or if, having made this entry, he does not land such goods within these fourteen days, or within such further period as the Commissioners may direct,—the customs officers can convey these goods to the Queen's warehouse,—and whenever the cargo of a ship has been discharged within the fourteen days, with the exception only of a small quantity of goods,—the customs officers can forthwith convey the remaining goods to the Queen's warehouse,—and, at any time also after the arrival of the ship, the customs officers can convey any small packages or parcels of goods therein to the Queen's warehouse, there to remain for due entry during the remainder of the fourteen days (§ 74).

If the duties due upon goods so conveyed to the Queen's warehouse are not paid within three months afterwards, or within such further period as the Commissioners may direct, together with all charges of removal and warehouse rent,—these goods can be sold, and the produce thereof applied—1st, to the payment of freight and charges,—next, of duties,—and the overplus, if any, is paid to the proprietor of the goods on his application for the same; but if the

goods or any of them are of a perishable nature, the Commissioners can forthwith direct sale thereof, and apply the proceeds in like manner. If the importing ship and goods are liable to the performance of quarantine, the time for entering and landing the goods is to be computed from the time the ship and goods have been released from quarantine; and if, forty-eight hours or any earlier period after the report of the ship, is specified in the bills of lading, for the discharge of the cargo or any part thereof, and the importer, owner, or consignee of these goods, or his agent, neglects to enter and land the same within such forty-eight hours, at any port or place approved by the Commissioners, the master or shipowner can immediately, on the expiry of these forty-eight hours, enter and land such goods (§ 74).

Whenever any goods remain on board the importing ship beyond the period of fourteen days after her arrival, or beyond such further period as the Commissioners may allow,—that ship is to be detained by the proper officer of customs, until all expenses of watching or guarding the said goods, beyond these fourteen days, or such further time as may be allowed, not exceeding 5s. per day, are paid, and also the expense of removing the goods or any of them, to the Queen's warehouse, if so removed (§ 75).

In a previous letter (LETTER XX.), you have already seen in what cases,—and for what kinds of goods, certificates of origin are required to be possessed by you, on *the exportation* of these goods from any of the British possessions abroad; and it now remains to be seen, what use you have to make of these certificates of origin, on the *importation* of such goods into the United Kingdom.

The Customs Consolidation Act enacts, that no goods can be entered (at a port of the United Kingdom) as being of or from any British possessions abroad, except the territories subject to the government of the Presidencies of Bengal, Madras, and Bombay respectively,—unless the master of the ship importing the same has delivered to the collector or comptroller a certificate, under the hand of the proper officer of the place where such goods were taken on board, of the due clearance of that ship from thence, containing an account of these goods (§ 77).

Before any spirits or sugar,—so long as any benefit attaches to this distinction,—can be entered as being of the produce of any British possession in America or the island of Mauritius,—the master of the ship importing the same must deliver to the collector or comptroller a certificate, under the hand of the proper officer of the place where these goods were taken on board,—testifying, that proof had been made in manner required by law,—that these goods are of the produce of some British possession in America or of the island of Mauritius,—stating the name of the place where these goods were

produced,—the quantity and quality thereof,—the number and denomination of the packages containing the same,—and the name of the ship in which they are laden, and of the master thereof (§ 79).

Before any sugar can be entered as being the produce of any British possession within the limits of the East India Company's charter,—the master of the importing ship must deliver to the collector or comptroller a certificate, under the *hand and seal* of the proper officer at the place where that sugar was taken on board,—testifying, that a declaration in writing, the contents of which he believed to be true, had been made and signed before him by the shipper of the sugar,—that the same was really and truly the produce of the British possession (§ 80). If any sugar, the produce of any British possession within the limits of the East India Company's charter,—so long as any benefit attaches to this distinction,—has been imported into the Cape of Good Hope from the place of its production,—accompanied by such a certificate of origin as would be sufficient for its admission into the United Kingdom at the rate of duty payable upon such sugar, if imported direct from the place of its production,—and has been warehoused at the Cape under the regulations there in force for the warehousing of goods,—and has been exported from that warehouse, accompanied by a certificate from the proper officer of customs at the Cape, setting forth the particulars of the importation,—of the warehousing,—and of the exportation of the same sugar,—and also setting forth the substance of the before-mentioned certificate of origin,—and if, on the arrival in the United Kingdom of the ship importing the same, the master delivers to the collector or comptroller at the port of importation, this certificate from the customs officer at the Cape,—that sugar is to be admitted at the port of importation in the United Kingdom, at the same rate of duty as would be payable, if it had been imported direct from the place of its production (§ 81).

Any goods of the growth of the Channel Islands, and any goods manufactured in these islands from materials of the growth of the same,—or from materials not subject to duty in the United Kingdom,—or from materials upon which the duty has been paid in the United Kingdom, and upon which no drawback has subsequently been granted,—may be imported into the United Kingdom from these islands respectively without payment of any duty, and such goods are not deemed to be included in any charge of duty imposed by any act on the importation of goods generally, from parts beyond the seas. But these goods can be charged with any proportion of such duties, as shall fairly countervail any duties of excise payable on the like goods the produce or manufacture of the part of the United Kingdom into which they are imported,—or payable upon any of the

materials from which these goods are manufactured. All goods manufactured in any of the Channel Islands from any other materials than the materials foresaid, are declared and taken to be *foreign goods* (§ 82). Before any goods can be entered as being the produce of the said islands (if any benefit attaches to such distinction), the master of the importing ship must deliver to the collector or comptroller, a certificate from the governor, lieutenant-governor, or commander-in-chief of the island from whence these goods were imported,—that proof had been made in manner required by law, that such goods were of the produce of such island,—stating the quantity and quality of the goods, and the number and denomination of the packages containing the same (§ 83).

Before any wine can be entered as being the produce of any of the British possessions abroad,—the master of the importing ship must deliver to the collector or comptroller a certificate, under the hand of the proper officer of that possession,—testifying, that proof had been made in manner required by law, that such wine is the produce of such possession,—stating the quantity and sort of wine, and the number and denomination of the packages containing the same (§ 84).

These are the regulations of the Customs Consolidation Act as to importation; and, as to complaints and disputes between merchants and others and the officers of customs,—the Customs Consolidation Act enacts, that if, in the port of London, or at any of the outports, any dispute should arise between the masters or owners of ships, merchants, importers, consignees, shippers, or exporters of goods, or their agent or agents, and any officer of customs,—with reference to the seizure or detention of any ship or goods,—or to any apparent omission, inadvertence, or non-compliance with the laws or regulations relating to the customs, it is lawful for the commissioners in the port of London, or the collector or comptroller, or any other officer of customs deputed for that purpose, to dispose of or determine such dispute in such manner as they or he may think just (§ 31, 37). And if, upon consideration of the facts and circumstances out of which the dispute has arisen, the commissioners, or, as already mentioned, the collector, &c., be of opinion that any penalty or forfeiture has been incurred by any such master, owner, &c., the commissioners can,—if they be of opinion that the penalty should be remitted,—remit and forego the same accordingly,—or, if they should be of opinion that a mitigated penalty should be imposed and enforced, they can mitigate the penalty or forfeiture to such an amount, as they deem sufficient satisfaction for the breach of the law or regulation complained of.

Before leaving the subject of importation, it may be proper to

observe, that by § 44 of the Customs Consolidation Act, tobacco, cigars, and snuff are prohibited to be imported except under certain restrictions; and by § 2 of the 18th and 19th Vict., c. 96, tobacco, cigars, and snuff are prohibited to be imported into the United Kingdom, unless in whole and complete packages containing not less than 80 pounds net weight of tobacco, cigars, or snuff,—and unless in ships of not less than 120 tons burden,—and unless into ports approved by the Commissioners for the importation and warehousing of tobacco; and any tobacco, cigars, or snuff imported into the United Kingdom contrary to this enactment, is forfeited, and is destroyed or otherwise disposed of as the Commissioners may direct.

In a previous letter (LETTER IV., p. 42, *et seq.*), I have given you the enactments of the Customs Consolidation Act as to the *coasting trade* of the United Kingdom, and the lading and unlading of goods in that trade, and I need not here repeat these; but I shall proceed in the following letter to the customs laws in regard to smuggling.—I am, &c.

LETTER XXII.

Smuggling—Evils attending smuggling—Power to make regulations for small craft—Forfeiture for breach—Licences for small craft—Name of vessel's boats, port, and master—Ships and boats with false bulk heads, &c.—Unshipping and landing uncustomed or prohibited goods—Ships or boats having spirits, tea, tobacco, or snuff, &c.—Found within any port, bay, &c.—Exemptions—Persons found on board—Ship or boat with cargo, afterwards found without—Or part of lading thrown overboard—Ship or boat not bringing to—Boarding and searching ship—Seizure or detention of ship, &c.—Notice of seizure—Disposal of or delivery to owner—Offences by persons—Bringing in prohibited or restricted goods—Removing goods without the proper authority—Unshipping spirits, &c., liable to forfeiture—Punishment of persons found on board ships or boats liable to forfeiture—Signals prohibited—Trial and punishment of persons—Taking up casks found floating or sunk—Detention in custody or apprehension of offenders—Mitigation of penalties or release from confinement.

GENTLEMEN,—Before closing these letters, it is necessary to call your special attention to the crime of smuggling, still so prevalent in the merchant service,—to the statutory measures for the prevention of this crime,—and the statutory punishments and penalties to which the parties concerned in it subject themselves.

It cannot well be conceived, what possible gratification can be afforded by being in possession of a few pounds of smuggled tea or tobacco, or of a small quantity of seizable spirits. Even supposing that you do succeed in escaping detection, and in evading the vigilance of the customs officers, yet the paltry gratification must be

short-lived, and cannot compensate for the solicitude and anxiety caused by the fear of detection. But, if smuggled goods are found on board, or in the possession of yourself or any of your crew,—what, then, are the consequences? Forfeitures, penalties, and imprisonment, with hard labour; and while you are undergoing imprisonment, what is to become of your wife and family? There are many instances in which domestic ruin has ensued, and the domestic happiness been irretrievably destroyed, from the husbands undergoing punishment for being concerned in smuggling. And, in any case, there is the infallible consequences of loss of character and situation; for, surely, no shipowner would be inclined to take into his employment a master who has been imprisoned for smuggling; nor would a master or owner be disposed to engage, as one of his crew, a seaman newly liberated from undergoing imprisonment for a like offence. Besides, your owners are materially interested in the prevention of smuggling;—as you will immediately see, that the vessel or boat in which smuggled goods are found, or which has been engaged in smuggling, is forfeited, and can only be restored to the owner upon payment of such sum as the Commissioners may modify, and, even in the best case, not without trouble and expense.

It seems very likely, that, in the great majority of the ordinary instances of smuggling, the party smuggling is quite ignorant of the statutory restrictions both as to vessels or boats and as to goods, as well as the special punishments he incurs by contravention; and in order to shew these, I will now point out the enactments of the Customs Acts, imposing restrictions on small craft,—enjoining regulations for the prevention of smuggling,—the offences committed by and penalties attaching to persons,—and the proceedings before the justices for the recovery of penalties and forfeitures, and the prosecution of offences.

The Customs Consolidation Act enacts the following restrictions and regulations as to vessels and boats not exceeding 100 tons:—

The Commissioners of Customs may make, from time to time, such general regulations as they deem expedient, in respect of vessels and boats not exceeding 100 tons,—for the purpose of prescribing,—with reference to the tonnage, build, and description of these vessels or boats,—the limits within which the same may be employed,—the mode of navigation,—the manner in which these vessels or boats must be employed,—and,—if armed,—the number and description of arms,—the quantity of ammunition,—and such other terms, particulars, conditions, and restrictions as the Commissioners think fit, and they can also, from time to time, revoke, alter, or vary these regulations (§ 199). And every ship or boat used or employed any manner contrary to the regulations prescribed by the Commissioners,

is liable to forfeiture, unless the same has been specially licensed by the Commissioners to be so used or employed, as now to be noticed (§ 200).

But if the Commissioners think fit, they can grant licences in respect of any vessels or boats not exceeding 100 tons burden, upon such terms and conditions, and subject to such restrictions and stipulations, as may be mentioned in these licences,—notwithstanding any general regulations made as aforesaid, whether these regulations be revoked or not; and if any vessel or boat so licensed does not comply with the conditions imposed by or expressed in its licence,—or if it is found without having its licence on board,—that vessel or boat is forfeited (§ 201). The Commissioners can revoke, alter, or vary any licence or licences granted under any former act, or which have been or may be granted under the Customs Consolidation Act, or any other act relating to the customs (§ 202). And if any such vessel or boat is used in the importation, landing, removal, carriage, or conveyance of any uncustomed or prohibited goods, the same is forfeited, and the owner and master each forfeits and pays a penalty equal to the value of the vessel or boat, not in any case exceeding £500 (§ 203).

The owner of every ship belonging wholly or in part to any of her Majesty's subjects, must paint or cause to be painted upon the outside of the stern of every boat belonging to his ship,—the name of that ship, and the port or place to which she belongs, and the master's name within the transom, in white or yellow Roman letters, not less than two inches in length, on a black ground, on pain of the forfeiture of every such boat not so marked, wherever the same may be found (§ 206). And the owner of every boat *not belonging to any ship*, must paint or cause to be painted upon the stern of his boat, in white or yellow Roman letters, on a black ground, and of the same size as before,—the name of the owner of the boat, and of the port or place to which she belongs, under the pain of the forfeiture of the boat not so marked, wherever the same can be found (§ 207).

All ships and boats belonging wholly or in part to her Majesty's subjects,—having false bulk-heads,—false bows,—double sides or bottoms,—or any secret or disguised place whatsoever, adapted for the purpose of *concealing* goods,—constructed in these ships or boats,—or having any hole, pipe, or device in or about their ships or boats adapted for the purpose of *running* goods,—are forfeited; and all foreign ships or boats coming into any port of the United Kingdom, having on board any goods liable to the payment of duties,—or prohibited to be imported into the United Kingdom,—concealed in false bulk-heads, false bows, double sides or bottoms, or in any secret or

disguised place whatsoever, constructed in these ships or boats, are forfeited (§ 208).

Then as to the unshipping and landing of uncustomed or prohibited goods, the Customs Consolidation Act enacts, that if any goods liable to the payment of duties are unshipped from any ship or boat in the United Kingdom,—customs or other duties not being first paid or secured,—or if any prohibited goods whatsoever are imported or brought into any port of the United Kingdom,—or if any goods prohibited to be exported are put on board any ship or boat, with the intention of being laden or shipped for exportation,—or are brought to any quay, wharf, or other place in the United Kingdom, in order to be put on board any ship or boat, for the purpose of being exported,—or if any goods prohibited to be exported, are found in any package produced to any customs officer, as containing goods not so prohibited,—or if any goods subject to any duty or restriction in respect of importation, are found or discovered to have been concealed in any manner on board any ship or boat within the limits of any port of the United Kingdom,—or are found, either before or after landing, to have been concealed in any manner within the foresaid limits,—then and in every of the foregoing cases,—all these goods are forfeited, together with any other goods which may be found packed or used in concealing them (§ 209). And all goods,—of which the importation is in any way restricted,—which are of a description admissible to duty,—and which are found or seized in the United Kingdom, under any law relating to the customs or excise,—are,—for the purpose of proceeding for their forfeiture, or for any penalty incurred in respect of them,—deemed and taken to be goods liable to and unshipped without payment of duties, unless the contrary be proved (§ 211).

If a ship or boat belonging wholly or in part to her Majesty's subjects,—or having half the persons on board subjects of her Majesty,—is found or discovered to have been within four leagues of that part of the coast which is between the North Foreland on the coast of Kent, and Beechy Head on the coast of Sussex,—or within eight leagues of any other part of the coast of the United Kingdom,—or if any *foreign ship or boat*, having one or more subjects of her Majesty on board, is found or discovered to have been within three leagues of the coast of the United Kingdom,—or if any foreign ship or boat is found or discovered to have been within one league of the coast of the United Kingdom,—or if any ship or boat is found or discovered to have been within one league of the Channel Islands,—the ship or boat so found or discovered, having on board or in any manner attached thereto,—or having had on board or in any manner attached thereto,—or conveying or having conveyed in any manner,

—any spirits, not being in a cask or other vessel capable of containing liquids of the size or content of twenty gallons at the least,—or any tea exceeding six pounds weight in the whole,—or any tobacco or snuff not being in a cask or package, *whole and complete*, containing eighty pounds weight of tobacco or snuff at the least,—or any tobacco stalks, tobacco stalk flour, snuff work,—or any cordage or other articles adapted and prepared for slinging or sinking small casks,—or any casks or other vessels whatsoever of less size or content than twenty gallons of the description used for smuggling spirits,—then and in every such case, the spirits, tea, tobacco, snuff, tobacco stalks, tobacco stalk flour, and snuff work,—together with the casks or packages containing the same, and the cordage or other articles, casks and other vessels of the foresaid description,—and also the ship or boat,—are forfeited (18 and 19 Vict., c. 96, § 25).

If a ship or boat is found or discovered to have been within any port, bay, harbour, river, or creek of the United Kingdom or the Channel Islands,—having on board or in any manner attached thereto,—or having had on board or in any manner attached thereto,—or conveying or having conveyed in any manner,—any spirits, not being in a cask or other vessel capable of containing liquids of the size or content of twenty gallons at the least,—or any tobacco or snuff, imported contrary to the prohibitions and restrictions in the Customs Acts,—or any tobacco stalks, tobacco stalk flour, or snuff work,—that ship or boat, and the spirits, tobacco, snuff, tobacco stalks, tobacco stalk flour, and snuff work, are forfeited. But if it is made to appear to the satisfaction of the Commissioners, that such spirits, &c., were on board without the knowledge or privity of the owner or master of the ship or boat, and without any wilful neglect or want of reasonable care on their parts,—then the Commissioners can deliver up the ship or boat to the owner or master (§ 26).

Nothing in the Customs Acts extends to render any ship of 120 tons burden or upwards liable to forfeiture on account of any tobacco, cigars, or snuff, if in whole and complete packages, each containing not less than eighty pounds net weight of such tobacco, cigars, or snuff;—nor to render any ship of 50 tons burden or upwards liable to forfeiture on account of any tea, or of any spirits in glass bottles or stone bottles not exceeding the size of three pints each,—such tea and spirits being really part of the cargo of that ship;—nor to render any ship liable to forfeiture on account of any spirits or tea, or of any tobacco really intended for the consumption of the seamen or passengers on board during their voyage, and not being more in quantity than is necessary for that purpose;—nor to render any ship liable to forfeiture, if really bound from one foreign

port to another, and pursuing her voyage, wind and weather permitting (§ 27).

Every person found or discovered to have been on board a ship or boat liable to forfeiture for being found or discovered to have been within any port, bay, &c., of the United Kingdom or of the Channel Islands,—having on board or in any manner attached thereto,—or having had on board or in any manner attached thereto,—or conveying or having conveyed in any manner,—such goods or things as subject that ship or boat to forfeiture,—or who is found or discovered to have been on board any of her Majesty's ships or vessels,—or on board any ship or vessel in her Majesty's employment or service,—or on board of any foreign post-office packet, being a national vessel, employed in carrying the mails between any foreign and the United Kingdom,—these last-mentioned ships, vessels, or packets being found or discovered to have been within any port, bay, &c., of the United Kingdom or the Channel Islands,—having on board or in any manner attached thereto,—or conveying or having conveyed in any manner,—any spirits not being in a cask or other vessel capable of containing liquids of the size or content of twenty gallons at the least,—or any tobacco or snuff not being in a whole and complete package containing eighty pounds weight of such tobacco or snuff at the least;—every such person forfeits the sum of £100, and can be detained and taken before any justice to be dealt with as after mentioned (§ 28).

If any ship or boat whatever is found within the limits of any port of the United Kingdom with a cargo on board, and the same ship or boat is afterwards found light or in ballast,—and the master is unable to give a due account of the port or place within the United Kingdom where that ship or boat has legally discharged her cargo,—such ship or boat is forfeited (16 and 17 Vict., c. 107, § 215). And every ship or boat belonging wholly or in part to her Majesty's subjects,—or having on board one or more of her Majesty's subjects,—which is found or discovered to have been within four leagues of the coast of the United Kingdom which is between the North Foreland on the coast of Kent and Beechy Head on the coast of Sussex,—or within eight leagues of any other part of the coast of the United Kingdom,—and from which any part of the lading has been thrown overboard,—or on board of which any of the goods are staved or destroyed to prevent seizure,—that ship or boat is forfeited (§ 216).

When any ship or boat belonging wholly or in part to her Majesty's subjects,—or having one half of the persons on board subjects of her Majesty,—is found within one hundred leagues of the coast of the United Kingdom, and does not bring to upon signal made by vessel

or boat in her Majesty's service of the Revenue, hoisting the proper pendant and ensign in order to bring that ship or boat to, and thereupon chase is given,—if, during the chase, or before that ship or boat bring to, any person or persons on board the ship or boat so chased, throw overboard any part of her lading,—or stave or destroy any part of that lading, to prevent seizure thereof,—then that ship or boat is forfeited; and all persons escaping from any such ship or boat,—or from any foreign ship or boat, during chase thereof by any vessel or boat in the service of her Majesty or of the Revenue, are deemed subjects of her Majesty, unless the contrary be proved (§ 217). And if any ship or boat liable to seizure or examination under any act for the prevention of smuggling, does not bring to when required so to do, on being chased by any vessel or boat in her Majesty's navy having the proper pendant and ensign of her Majesty's ships hoisted, —or by any vessel or boat duly employed for the prevention of smuggling, and having a proper pendant and ensign hoisted,—it is lawful for the captain, master, or other person having the charge or command of the vessel or boat in her Majesty's navy, or employed as aforesaid—(first causing a gun to be fired as a signal,)—to fire at or into any such ship or boat,—and the captain, master, or other person acting in his aid or by his direction, is, by the act, indemnified and discharged from any indictment, penalty, action, or other proceeding for so doing (§ 218).

Any officer or officers of the army, navy, or marines duly employed for the prevention of smuggling and on full pay,—or any officer or officers of customs, producing his or their warrant or deputation (if required),—can go on board *any ship* which may be within the limits of any port of the United Kingdom, and rummage and search the cabin and all other parts for prohibited or uncustomed goods, and remain on board so long as the ship continues within the limits of that port (§ 219).

All ships, boats, carriages, or other means of conveyance, together with all horses and other animals made use of in the removal, carriage, or conveyance of any goods liable to forfeiture, are forfeited (§ 222). All ships and boats, and all goods whatsoever, liable to forfeiture, and all persons liable to be detained for any offence under the Customs Acts, can be seized or detained in any place, either upon land or water, by any officer or officers of her Majesty's army, navy, or marines, duly employed for the prevention of smuggling, and on full pay,—or by any officer or officers of customs or excise,—or by any person having authority from the Commissioners of Customs or Inland Revenue to seize,—or duly employed for the prevention of smuggling. And, as soon as conveniently may be, all ships, boats, and goods so seized are to be delivered into the care of

the proper officer appointed to receive the same; and the forfeiture of a ship or boat includes her tackle, apparel, and furniture,—and the forfeiture of any goods includes the package in which the same are found, and all the contents thereof (§ 223).

Whenever a ship, boat, or goods are seized, as forfeited under the Customs Acts, the seizing officer must forthwith give notice in writing of that seizure and of the grounds thereof, to the master or owner of the ship, boat, or goods, if known, either by delivering the same to him personally, or by letter addressed to him at his place of abode, if known, and transmitted by post; and all ships, boats, or goods so seized, are taken and deemed to be condemned, and can be sold, in manner directed by law in respect to ships, boats, and goods seized and condemned for breach of any law relating to the customs, —unless the person from whom these have been seized, or the owner of them, or some person authorised by him,—within one month from the day of seizing the same,—give notice in writing,—if in London, to the person seizing the same, or to the Secretary or Solicitor for the Customs,—and, if elsewhere, to the person seizing, or to the collector, comptroller, or other chief officer of customs at the nearest port,—that he claims the ship, boat, or goods, or intends to claim them (§ 226). But this notice is not required where the seizure is made on the person or in the presence of the offender; and where notice is required, it may be served either in the manner above prescribed, or by delivery at the place of abode of the party to whom it is addressed (18 and 19 Vict., c. 96, § 29). All ships and boats, and all goods whatsoever, which have been so seized and condemned, are to be disposed of as soon as conveniently may be after condemnation, and in such manner as the Commissioners of Customs direct (16 and 17 Vict. c., 10, § 228); but the Commissioners of the Treasury or of the Customs can direct any ship, boat, goods, or commodities whatever seized under any of the Customs Acts, to be delivered to the proprietor thereof,—whether condemnation has taken place or not,—upon such terms and conditions as the said Commissioners respectively may think fit (§ 227).

Then, as to offences committed by persons against the customs laws, and the penalties and punishments to which these persons subject themselves,—the Customs Consolidation Act enacts, that every person,—who is concerned in importing or bringing into the United Kingdom,—any *prohibited goods*,—or any goods the importation of which *is restricted*,—contrary to the prohibition or restriction, and whether the same be unshipped or not,—and every person,—who unships or assists or is otherwise concerned in the unshipping of any goods which are prohibited,—or of any goods which are restricted and imported contrary to such restriction,—or of any goods liable to duty,

but the duties on which have not been paid or secured,—or who shall be in any way knowingly concerned in conveying, removing, depositing, concealing, or in any manner dealing with any goods liable to duties of customs, with intent to defraud her Majesty of these duties or any part thereof,—or who is in any way knowingly concerned in any fraudulent evasion or attempt at evading of such duties or any part thereof,—each person forfeits, in each and every of the foregoing cases, either treble the value of the goods, or the penalty of £100, at the election of the Commissioners (§ 232).

Every person who removes any goods imported into the United Kingdom, from any ship, quay, wharf, or other place, previous to the examination thereof by the proper officer of customs,—unless under the care or authority of such officer,—or who removes or withdraws from any quay, wharf, or other place, any goods entered to be warehoused at the landing thereof,—so that no sufficient account is taken of these by the proper officer,—or so that the same are not duly warehoused,—and every person who assists or is otherwise concerned in such removal or withdrawal, or knowingly harbours, keeps, or conceals, or knowingly permits, or causes, or suffers, or procures to be harboured, kept, or concealed any such goods, or to whose possession any such goods knowingly comes,—every such person forfeits either treble the value thereof, or the penalty of £100, in the election of the Commissioners (§ 233).

Every person who unships, or is aiding or concerned in the unshipping of any spirits, tobacco, snuff, tobacco stalks, tobacco stalk flour, or snuff work,—or of any tea or silk of the value of £10 or upwards, and liable to forfeiture under any act relating to the customs or excise,—or who carries, conveys, or conceals,—or is aiding, assisting, or concerned in the carrying, conveying, or concealing of any such spirits, tobacco, &c.,—or of any tea or silk as aforesaid,—forfeits for each such offence treble the value of the goods, or the sum of £100, at the election of the Commissioners; and every such person can be detained to be dealt with as after-mentioned (§ 234).

Every subject of her Majesty,—who is found or discovered to have been on board any ship or boat liable to forfeiture, for being found or discovered to have been within any of the distances from the United Kingdom or the Channel Islands, as mentioned in §§ 25 and 26 of the 18 and 19 Vict., c. 96, and in §§ 216 and 217 of the Customs Consolidation Act *ut supra*,—having or having had on board or in any manner attached thereto, or conveying or having conveyed in any manner,—such goods or things as would subject that ship or boat to forfeiture,—or who is found or discovered to have been within any of these distances, on board any ship or boat from which any part of the cargo or lading has been thrown over-

board or staved or destroyed, to prevent seizure,—and *every person, not being a subject of her Majesty*,—who is found or discovered to have been on board any ship or boat liable to forfeiture for any of the causes now mentioned, within one league of the coast of the United Kingdom or of the Channel islands,—that person,—upon being convicted, before any justice, of any of these offences, is to be adjudged by the justice, for the first of such offences, to be imprisoned in any house of correction, and there kept to hard labour for any term not less than six nor more than nine months,—for the second of such offences, for any term not less than nine nor more than twelve months,—and for the third or any subsequent offence, for twelve months. Every such person can be detained, and taken before any justice, to be dealt with as after mentioned (§ 235).

After sunset and before sunrise between 21st September and 1st April,—or after the hour of eight in the evening and before the hour of six in the morning at any other time of the year,—no person must make, aid, or assist in making any signal in or on board or from any ship or boat,—or on or from any part of the coast or shore of the United Kingdom,—or within six miles of any part of that coast or shore,—for the purpose of giving notice to any person on board any smuggling ship or boat, whether there be any person on board or not, within distance to notice such signal. If, contrary hereto, any person makes, or causes to be made, or aid or assists in making, any such signal,—the person so offending is guilty of a misdemeanor; and upon being duly convicted, he,—by order of the Court before which he is convicted,—either forfeits a penalty of £100,—or, at the discretion of the Court, he is committed to the common jail or house of correction, to be kept to hard labour there for any term not exceeding one year (§ 244).

Whenever any person has been detained and taken before a justice, for being found or discovered to have been on board any ship or boat within any port, &c., of the United Kingdom or the Channel Islands, which has or had on board spirits or tobacco in casks or packages as before mentioned,—or for unshipping, or aiding or being concerned in the unshipping of any spirits or tobacco liable to forfeiture under any of the Customs or Excise Acts,—or for carrying, conveying, or concealing any such spirits or tobacco,—and it appears to the justice, that the quantity of spirits in respect of which that person has been so detained, does not exceed two gallons,—or that the quanity of tobacco in respect of which that person has been so detained, does not exceed ten pounds,—the justice can proceed summarily upon the case without any information, and although no direction has been given by the Commissioners of Customs,—and convict that person of the offence, and adjudge that he shall,—in

lieu of any other penalty,—forfeit any sum not less than the single nor more than treble the value of these goods, including the importation duties,—and, in default of payment, commit him to any of her Majesty's gaols for any time not exceeding one month (§ 239).

No subject of her Majesty,—other than officers of the Navy, Customs, or Excise,—must intermeddle with or take up any spirits, —being in casks of less content than twenty gallons,—which may be found floating upon or sunk in the sea within 100 leagues of the United Kingdom; and if any spirits are so intermeddled with or taken up,—the same are forfeited, together with the ship or boat in which they are found (§ 242).

When any person has been detained for any offence against the Customs Acts, and taken before a justice,—the justice may,—if he see reasonable cause,—order him to be detained in gaol or in custody of the police or constabulary force, a reasonable time, to obtain the order of the Commissioners of Customs or Inland Revenue,—and to prepare the necessary information, conviction, and warrants of commitment,—and at the expiration of that time, to be brought before him, or any other justice or justices, who can then finally hear and determine the matter. Or, when any information has been preferred before a justice against any person for any such offence, and it appears to the justice,—by depositions on oath,—that that person is likely to abscond before the information can be heard,—the justice can,—in lieu of issuing a summons for the appearance of the offender, —grant warrant to apprehend and bring the offender before him or any other justice, at the time and place named in the warrant, for the hearing of the information. But a person so detained or apprehended, may be liberated, on giving security to the satisfaction of the justice,—in the sum of £100, or in the amount of the penalty sought to be recovered,—to appear at the time and place appointed by the Justice for hearing the case (18 and 19 Vict., c. 96, § 30).

The Commissioners of the Treasury or Customs can mitigate or remit any penalty or fine, or any part of a penalty or fine, incurred under the Customs Acts,—or release from confinement any person committed under these acts, on such terms and conditions as to them may seem proper (16 and 17 Vict., c. 107, § 243).

I have thus shewn you, so far chiefly as you are concerned, what are the statutory regulations against smuggling, and the punishments for breach of these; and I should conceive, that enough has been said to deter you, for the sake of yourself and your owners, from being guilty of any such practices, and also to make you use every possible means, to prevent any of your crew from being guilty of the like.—I am, &c.

LETTER XXIII.

Payment of wages—Periods within which payment must be made—In home trade ships—In all other ships—Seamen of foreign-going ships discharged in United Kingdom, must be so before shipping-master—Of home trade ships may be—Account to be delivered by master to seaman before paying off or discharging—Deductions in—Book of deductions—Certificate of discharge—Rules as to settlement of wages—Mutual release—Copy of this release—Statement of whole amount paid before shipping-master—Deductions from wages—Allotment notes—For refusal to work—For time of imprisonment—Advances out of poors funds—Forfeiture for unreasonably complaining of provisions—Forfeiture for desertion—For neglecting or refusing to join, &c.—Quitting without leave—For wilful disobedience—For continued wilful disobedience—For wilfully damaging ship, &c.—For any act of smuggling—Expenses incurred for apprehending deserter and conveying him on board—Penalty for false statement of last ship or name—Disputes as to deductions—Reference to shipping-master, &c.—Entries in official log-book—Fines specified in the agreement—Deduction and payment of—Entries in official log-book as to—Recovery of wages not exceeding £50—Summary proceedings before justices or sheriff—Cannot be recovered in Court of Admiralty, &c.—Unless in certain cases—Not entitled to sue for wages abroad—Unless in certain cases—When compensation due to seamen—Compensation for improper discharge—Master's remedies for wages—Returns to be made to shipping-master—Particulars of—In foreign-going ships—In home trade ships—In ships lost or abandoned.

Gentlemen,—The voyage having been thus finished, then comes the payment of the wages and the discharge of the seamen, which are regulated by the Merchant Shipping Act.

The following periods are fixed within which the master or owner must pay to each seaman his wages, viz.—in the case of a *home trade ship*, within two days after the termination of the agreement, or at the time when the seaman is discharged;—and in the case of *all other ships* (except ships employed on the southern whale fishery or on other voyages, for which, by the terms of their agreement, the seamen are wholly compensated by shares in the profits of the adventure), within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens. In all cases, the seaman is entitled, at the time of his discharge, to be paid on account a sum equal to one-fourth part of the balance due him; and should the master or owner neglect or refuse, without sufficient cause, to make payment in manner now mentioned, he must pay to the seaman a sum not exceeding the amount of two days' pay for each of the days,—not exceeding ten,—during which payment is delayed beyond the respective periods foresaid,—this sum being recoverable as wages (17 and 18 Vict., c. 104, § 187).

In the case of all British *foreign-going ships*,—in whatever part of her Majesty's dominions the same are registered,—all seamen

discharged in the United Kingdom, must be discharged and receive their wages in the presence of a duly appointed shipping-master, except in cases where a competent court otherwise directs; and should a master or owner discharge any seaman belonging to his ship,—or,—except as immediately noticed,—pay his wages in any other manner, he incurs a penalty not exceeding £10. In the case of *home trade ships*,—if the owner or master so desires,—the seamen may be discharged and receive their wages in presence of a shipping-master in like manner (§ 170).

Not less than twenty-four hours before paying off or discharging a seaman, the master must deliver to him,—or if he is to be discharged before a shipping-master, to that shipping-master,—a full and true account (in the form sanctioned by the Board of Trade) of his wages, and of all deductions to be made therefrom, *on any account whatever;* and in default, the master incurs for each offence a penalty not exceeding £5. No deduction can be allowed from a seaman's wages, unless it is included in this account so delivered, except in respect of any matter happening after it has been delivered; and, *during the voyage*, the master must enter the various matters in respect of which such deductions are made, with the amounts of the respective deductions, *as they occur*, *in a book to be kept for that purpose*, and, if required, he must produce this book at the time of payment of the wages, and also upon the hearing before any competent authority of any complaint or question relative to these wages (§ 171).

Upon the discharge of a seaman,—or upon payment of his wages,—the master must sign and give him a certificate of his discharge, in the form sanctioned by the Board of Trade, specifying the period of his service, and the time and place of his discharge; and if the master fails to sign and give to that seaman this certificate of discharge, he incurs for each such offence a penalty not exceeding £10. Upon the discharge of every certified mate whose certificate of competency or service has been delivered to and retained by the master,—the latter must return this certificate under a penalty not exceeding £20 (§ 172).

The following rules must be observed with respect to the settlement of wages:—

(1.) Upon the completion before a shipping-master of any discharge and settlement, the master or owner and each seaman must respectively,—in presence of the shipping-master,—sign, in the form sanctioned by the Board of Trade, a mutual release of all claims in respect of the past voyage or engagement, and the shipping-master also signs and attests it, and retains and transmits it as directed in the act:—

(2.) This release, so signed and attested, operates as a mutual

discharge and settlement of all demands between the parties thereto, in respect of the past voyage or engagement:—

(3.) A copy of this release, certified under the hand of the shipping-master to be a true copy, must be given by him to any of the parties to it who requires the same; and this copy is received as evidence in any question touching the foresaid claims, and has all the effect of the original of which it purports to be a copy:—

(4.) In cases in which the Merchant Shipping Act requires this discharge and payment to be made before a shipping-master, no payment, receipt, settlement, or discharge otherwise made, operates or can be admitted as evidence of the release or satisfaction of any claim:—And—

(5.) Upon payment being made by a master before a shipping-master, the latter, if required, signs and gives to the master a statement of the whole amount so paid, and this statement, as between the master and his employer, is received as evidence that he has made the payments therein mentioned (§ 175).

These are the statutory rules:—which have to be observed in the discharge of the seamen, and in the payment of their wages; and as your only difficulty will be as to the proper statutory deductions to be made from these wages, and as you have already seen what these deductions are,—how the fines, forfeitures, and penalties must be entered in the official log-book, and duly certified, and also the book which you are required to keep for the purpose of entering the various matters, in respect of which these deductions can be made, and the amounts of the respective deductions, as they occur,—it may be useful to place before you, in a connected series, these different deductions and the grounds of them:—

1. The first deduction will be of the amounts which may have been paid under the allotment notes, the seamen may have given to any of his relatives mentioned in § 169 (Letter II.), and these amounts have to be furnished to you by the owner or the party upon whom the note has been drawn:—

2. For any period during which a seaman unlawfully refuses or neglects to work when required, whether before or after the time fixed by agreement for beginning work,—he is not entitled to wages, and his wages for any such periods (the duration being ascertained from the attested entry in the log) are to be deducted accordingly (§ 186).

3. For any period during which he is imprisoned for any offence committed by him, he is not entitled to wages, unless the court hearing the case otherwise directs, and, therefore, in the absence of any such direction, the wages for that period will be deducted (§ 186).

4. Any sums which may have been advanced, during a seaman's absence on a voyage, by a union or parish in the United Kingdom, to his wife, children, or step-children, or any of them, and of which reimbursement is made by the owner out of the seaman's wages, in terms of §§ 192, 193.

5. If a complaint has been made under § 221, of the provisions or water for the use of the crew having been, at any time, of bad quality, unfit for use, or deficient in quantity, but if the officer to whom this complaint has been made, has certified that there was no reasonable grounds for that complaint, each of the parties so complaining forfeits out of his wages, to the owner, a sum not exceeding one week's wages (§ 222).

6. If a seaman or apprentice has deserted,—besides being liable to imprisonment for any period not exceeding twelve weeks, and forfeiting all or any part of the clothes and effects he leaves on board,—he also forfeits all or any part of the wages or emoluments he has then earned (§ 243).

7. If he neglect or refuse, without reasonable cause, to join his ship, or to proceed to sea with her,—or if he absent himself without leave at any time within twenty-four hours of the ship's sailing from any port, either at the commencement or during the progress of a voyage,—or if he absent himself at any time, without leave and without sufficient reason,—from his ship and from his duty, not amounting to desertion or not treated as such by the master,—besides being liable to imprisonment, he, at the discretion of the court, is liable to forfeit out of his wages a sum not exceeding the amount of two days' pay; and in addition, for every twenty-four hours of absence, either a sum not exceeding six days' pay,—or any expenses which may have been properly expended in hiring a substitute (§ 243).

8. For quitting the ship without leave, after her arrival at her port of delivery, and before she is placed in security,—he is liable to forfeit out of his wages a sum not exceeding one month's pay (*Ibid.*).

9. For wilful disobedience to any lawful command,—besides his liability to imprisonment for any period not exceeding four weeks, with or without hard labour,—he is also liable, at the discretion of the court, to forfeit out of his wages a sum not exceeding two days pay (*Ibid.*).

10. For *continued* wilful disobedience to lawful commands,—or *continued* wilful neglect of duty, besides his liability to imprisonment for any period not exceeding twelve weeks, with or without hard labour,—he is also liable, at the discretion of the court, to forfeit, for every twenty-four hours' continuance of this disobedience or

neglect,—either a sum not exceeding six days' pay,—or any expenses which have been properly incurred in hiring a substitute (§ 243).

11. For wilfully damaging the ship, or embezzling or wilfully damaging any of her stores or cargo,—he is liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also to imprisonment at the discretion of the court (*Ibid.*).

12. For any act of smuggling of which a seaman is convicted, and whereby loss or damage is occasioned to the master or owner, —he is liable to pay to that master or owner, such a sum as is sufficient to reimburse him for such loss or damage; and the whole or a proportionate part of his wages can be retained in satisfaction or on account of this liability, without prejudice to any further remedy (*Ibid.*).

13. Whenever a seaman or apprentice is brought before a court for having neglected or refused to join or proceed to sea in the ship in which he has been engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, and when the master or the owner or his agent requires the offender to be conveyed on board, or to be delivered to the master or a mate, or to the owner or his agent for that purpose,—the court can, in such case, order any costs and expenses reasonably incurred by or on behalf of the master, &c., by reason of the offence, to be paid by the offender, and, if necessary, to be deducted from any wages he has then earned, or which he may afterwards earn under his then existing agreement (§ 247).

When, on or before being engaged, a seaman has wilfully and fraudulently made a false statement of his last ship, or his last alleged ship,—or has wilfully and fraudulently made a false statement of his own name,—he incurs a penalty not exceeding £5, and this penalty can be deducted from any wages he may earn in virtue of the engagement he is then under; and, subject to reimbursement of any loss and expenses occasioned by any previous desertion, the penalty is paid and applied,—if in the United Kingdom,—in such manner as the treasury directs,—and,—if in any British possession, —to the public treasury of that possession,—as directed by § 524 (§ 255).

There does not seem to be any rule given in the Merchant Shipping Act, by which the precise amount of a penalty incurred for a breach of discipline, is to be ascertained, unless where the parties agree in writing to refer any dispute as to the sums to be deducted on these accounts, to the shipping-master before whom the wages are paid, and the crew discharged, agreeably to § 173,—or unless in any legal proceedings in regard to the wages from which these forfeitures or

deductions are made, in which these forfeitures or deductions can be determined under § 254. And, therefore, while you will take care that a full detail of the act or acts by which a penalty or forfeiture is incurred, be entered in the log-book *at the time*, and that all the other requirements of § 244 have been duly complied with and entered and signed accordingly,—you ought, at the same time, to enter in the book in which, by § 171, you have to enter the various matters for which deductions are to be made, and the amount of these deductions,—the amount of the penalty or forfeiture in the words of the section under which these have been incurred, leaving the precise amount of deduction from the wages to be afterwards fixed.

If, again, the agreement specifies the fines which are to be imposed for acts of misconduct, and an act of misconduct is committed by a seaman which it is intended to punish by enforcing that fine, there must, as noticed in a previous letter, be an entry of this act of misconduct made in the official log-book, and a copy of this entry is furnished, or the entry is read over, to the offender, and an entry of this reading and any reply the offender makes must be made, all as have been before detailed ;—then, the fine is deducted and paid over as follows:—(1.) If the offender is *discharged* in the United Kingdom, and the offence and the foresaid entries in the official log-book in respect thereof are proved,—in the case of a foreign-going ship,—to the satisfaction of the shipping-master before whom the offender is discharged,—and in the case of a home trade ship,—to the satisfaction of the shipping-master at or nearest to the place at which the crew is discharged,—the master or owner deducts this fine, as entered in the book appointed to be kept for that purpose by § 171, from the wages of the offender, and pays the same over to that shipping-master:—(2.) If, before the final discharge of the crew in the United Kingdom, the offender *should enter into any of her Majesty's ships*, or *be discharged abroad* (§ 207),—and if the offence and the foresaid entries in the official log-book are proved to the satisfaction,—either of the officer in command of the ship into which he so enters,—or of the consular officer, officer of customs, or other persons by whose sanction he is so discharged,—the fine is thereupon deducted from the offender's wages, and an entry of this deduction is then made in the official log-book, and signed by the officer or other person so sanctioning his discharge (§§ 205, 209, 215):—(3.) On the return of the ship to the United Kingdom, the master or owner pays over the fine so deducted,—in the case of a foreign-going ship,—to the shipping-master before whom the crew is discharged,—and in the case of a home trade ship,—to the shipping-master at or nearest to the place at which the crew is discharged. And if the master or owner neglects or refuses to pay over the fine so incurred

in the manner before directed, he incurs, for each such offence, a penalty not exceeding *six times* the amount of the fine so retained by him (§ 256).

This section, you will observe, applies to acts of misconduct specified in the agreement, and for which, also by the agreement, a certain amount of fine is agreed to be inflicted; and, therefore, in addition to the entries in the official log-book required to be made in terms of § 244, of any of the offences enumerated in § 243,—there must be distinct and separate entries in that log-book, of *each* act of misconduct committed by each seaman, for which his agreement imposes a fine, and which it is intended to punish by enforcing that fine. There must also be entered, at the same time, in the book of deductions kept in terms of § 171, each act of misconduct for which this fine is imposed, and intended to be enforced; and the other statutory requirements in reference to these entries in the official log-book must be attended to, otherwise you incur, for each omission, a penalty not exceeding £5 (§ 284).

Then, as to the manner in which a seaman or apprentice can recover his wages, when these wages do not exceed £50, the Merchant Shipping Act enacts, that any seaman or apprentice, or *any person duly authorised on his behalf*, can sue in a summary manner before two justices of peace acting in or near the place at which the service has terminated,—or at which the seaman or apprentice has been discharged,—or at which any person upon whom the claim is made, is or resides, —or in Scotland, before the justices, or before the sheriff of the county in which any such place is situated,—for any amount of wages due to him, not exceeding £50, over and above the costs of the proceedings for the recovery thereof,—and that so soon as these wages become payable. Every order made in the matter by the justices or the sheriff is final (§ 188).

But no suit or proceeding for the recovery of wages under £50, can be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty,—or in the Court of Session in Scotland,—or in any superior court of record in her Majesty's dominions,—unless the owner of the ship is adjudged bankrupt,—or is declared insolvent,—or unless the ship is under arrest, or is sold by the authority of any of the courts foresaid,—or unless the justices acting under the authority of the Merchant Shipping Act refer the case to be decided by such court,—or unless neither the owner nor the master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put on shore (§ 189).

When a seaman is engaged for a voyage which is to terminate in the United Kingdom, that seaman is not entitled to sue for his wages in any court abroad, unless he is *discharged* with the sanction of the

official already mentioned, and with the *written* consent of the master,—or unless he proves such ill usage on the part of the master, or by his authority, as to warrant reasonable apprehension of danger to his life if he were to remain on board. But if, on his return to the United Kingdom, a seaman proves that the master or owner has been guilty of any conduct or default, which, but for this section of the Merchant Shipping Act, would have entitled the seaman to sue for wages before the termination of the voyage or engagement,—he is entitled,—in addition to his wages,—to recover such compensation, not exceeding £20, as the court hearing the case thinks reasonable (§ 190).

When a seaman has signed the agreement, but is discharged before the commencement of the voyage, or before one month's wages are earned, *without fault on his part justifying this discharge, and without his consent*,—he is to receive from the master or owner,—in addition to any wages he has earned,—due compensation for the damage thereby caused to him, not exceeding one month's wages,—and, on his adducing such evidence as the court hearing the case deems satisfactory, of his having been so improperly discharged,—he can recover this compensation as if it had been wages duly earned (§ 167).

So far as the case permits, you yourself, as master, have the rights, liens, and remedies for the recovery of your wages, which, by the Merchant Shipping Act or by any law or custom, a seaman, not being a master, has for the recovery of his wages; and if, in any proceeding in an Admiralty or Vice-Admiralty Court as to your claim to wages, any right of set-off or counter-claim is set up,—the court can enter into and adjudicate upon all questions and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and can direct payment of any balance found to be due (§ 191).

Then, as to the returns which the master has to make to the shipping-master, it is enacted, that every master of *every foreign-going ship*, of which the crew is discharged in the United Kingdom, in whatever part of her Majesty's dominions she is registered, and of *every home trade ship*,—must make out and sign a list in the form sanctioned by the Board of Trade, containing the following particulars:—

(1.) The number and date of the ship's register, and her registered tonnage:—

(2.) The length and general nature of the voyage or employment:—

(3.) The names, surnames, ages, and places of birth of all the crew, including the master and apprentices,—their qualities on

board,—their last ships or other employments,—and the dates and places of their joining the ship :—

(4.) The names of any members of the crew who have died or otherwise ceased to belong to the ship, with the times, places, causes, and circumstances thereof :—

(5.) The names of any members of the crew who have been maimed or hurt, with the times, places, causes, and circumstances thereof :—

(6.) The wages due to any of the crew who have died, at the times of their respective deaths :—

(7.) The clothes and effects belonging to any of the crew who have died, with a statement of the manner in which they have been dealt with, and the money for which any of them have been sold :—

(8.) The name, age, and sex of every person, not being one of the crew, who dies on board, with the date and cause thereof :—

(9.) Every birth which happens on board, with the date thereof, —the sex of the infant,—and the names of the parents :—

(10.) Every marriage which takes place on board, with the date thereof, and the names and ages of the parties (§ 273).

Within forty-eight hours after the arrival of a *foreign-going ship* at her final port of destination in the United Kingdom,—or upon the discharge of her crew,—whichever first happens,—the master must deliver to the shipping-master before whom the crew is discharged,—this list as before required, and if he fails so to do, he incurs, for every default, a penalty not exceeding £5 ; and upon this delivery being made, the shipping-master gives the master a certificate of the delivery. No customs officer can clear inwards any foreign-going ship without the production of this certificate, and he can detain the ship until the same is produced (§ 274). And the master or owner of every *home trade ship* must,—within twenty-one days after the 30th June and the 31st December in every year,—transmit or deliver to some shipping-master in the United Kingdom,—a list as before required, and, in default, he incurs a penalty not exceeding £5 ; and, of this transmission and delivery, the shipping-master gives the master or owner a certificate. No officer of customs can grant a clearance or transire for a home trade ship, without the production of this certificate, and he can detain the ship until the same is produced (§ 275).

But if, by reason of transfer of ownership or change of employment, a ship ceases to fall within the definition of a *foreign-going* or of a *home trade ship*,—the master or owner must,—within one month,—if the ship is then in the United Kingdom,—and if she is elsewhere,—within six months,—deliver or transmit to the shipping-

master at the port to which the ship had belonged,—a list as before mentioned,—duly made out to the time at which she ceased to be a foreign-going or home trade ship, and, in default, he incurs a penalty not exceeding £10. If a ship is lost or abandoned,—the master or owner must,—if practicable, and as soon as possible,—deliver to the shipping-master at the port to which she belonged, a list as before mentioned, duly made out to the time of that loss or abandonment; and, in default, the master or owner incurs, for each offence, a penalty not exceeding £10 (§ 276).

Having, thus, in the preceding letters, brought under your notice the incidents that may occur during a voyage, there are still two matters to be considered,—barratry, and the responsibility and liability of owners,—which I now proceed to treat of in the two following letters.—I am, &c.

LETTER XXIV.

Barratry—Meaning of the term—Loss from this cause—One of the perils insured against—What acts amount to barratry—Instances of—What are not—Instances of—Against whom barratry can be committed—No matter when barratry is committed—But must be during the voyage insured—Punishment of wilfully destroying or setting fire, &c., to ship—Exhibiting false signals, &c.—Preventing any person endeavouring to escape—Destroying any part of ship—Turning pirate—Running away with ship, &c.—Dismissal of master—Retention of certificate by—Complaint against master for doing so—What it must state—Punishment of—Registering vessel of new.

Gentlemen, — Before bringing these letters to a close, there is one subject that requires to be treated of, and that is the barratry of the master and mariners. This term barratry, you should be aware, means any act committed by the master or mariners, for an unlawful or fraudulent purpose, or of a criminal or fraudulent nature, or which is grossly negligent, contrary to their duty to their owners, without the owners' consent or knowledge, and done either for the benefit of the master or mariners, or to the injury of the owners of the ship (1 Park, 189; 2 Arn. 821). A loss arising from this cause, is one of the losses for which the underwriter is liable to indemnify the owner; and we must, in the first place, see what acts amount to barratry.

Thus, sailing out of port, without payment of the port duties, whereby the goods were forfeited and lost, is barratry (Knight *v.* Cambridge, 2 Str. 1174); or, if the master, without proper authority, and contrary to the orders of his owner, cruise in quest of prizes, this is barratry, though it be done for the benefit of his

owner (Moss *v.* Byrom, 6 T. R. 379); or, if he disregard an embargo (Robertson *v.* Ewer, 1 T. R. 127); or, if he attempt to break a blockade, for which the ship or goods are condemned (Goldschmidt *v.* Whitmore, 3 Taunt. 508); or, if he engage in smuggling, without the knowledge and consent of his owner (Blankley *v.* Winstanley, 3 T. R. 279); or, if the master deviate from the proper course of the voyage, for the purpose of taking in smuggled or contraband goods, on his own account (Vallejo *v.* Wheeler, Cowp. 143); or, if he deviate from the voyage, on a private and unlawful adventure of his own (Ross *v.* Hunter, 4 T. R. 33),—these are barratry. Or, if the master of a slave ship (when that trade was permitted) sail to an enemy's settlement on the coast, for the purpose of trading to more advantage than he could at a British settlement, and, for doing so, is seized by a British frigate,—this is barratry (Earl *v.* Rowcroft, 8 East, 126); and, where a ship and cargo were barratrously taken out of her course by the crew, and the ship and part of the cargo sold, and the remainder sent home by another vessel;—it was held to be a total loss of the cargo, from the moment the ship was taken out of her course, by the barratrous act of the crew (Dixon *v.* Read, 5 B. A. 597). And barratry may be committed by the master of a ship who is part owner;—as where he fraudulently sells the ship and cargo, and applies the proceeds to his own use (Jones *v.* Nicholson, 10 Exch. Rep. 28).

But when, in the course of the voyage, the master loses his reckoning, and when he discovers his situation, instead of steering directly for his place of destination, bears up to an island out of the course,—this, though a deviation, yet, being without any fraudulent intention, is not barratry (Phyn *v.* Ro. Ex. Ass. Co., 7 T. R. 505); and, if the master merely mistake the meaning of his instructions, or the best mode of acting for carrying them into effect,—this is not barratry (Bottomly *v.* Bovill, 5 B. C. 210). Neither is it barratry, if the master alter the voyage for the benefit of the owners, and with their consent, and without any criminal intention on the part of the master (Stamma *v.* Brown, 2 Stra. 1173); neither will an error of judgment, on the part of the master, be construed into barratry;—as, where a vessel having sprung a leak, the master took her into port, and before any survey was made, he broke up her ceiling and end-bows with crowbars, thereby injuring and weakening her,—it was considered that there was a whole ocean between this and barratry (Todd *v.* Ritchie, 1 Stark. 240).

Again, with respect to the parties against whom acts of barratry may be committed,—the general rule is,—that barratry can only be committed against the owners, and, therefore, not with their consent (2 Mar. 529; 2 Arn. 831); and it follows that, if the master

be both master and sole owner, he cannot commit barratry against himself (Nutt *v.* Bourdieu, 1 T. R. 723). But where the master, being part owner, fraudulently sold the ship and cargo, and applied the proceeds to his own use, it was held that this was a loss insured against by the words "barratry of the master" (Jones *v.* Nicholson, 10 Exch. Rep. 28). A general freighter of the vessel is held to be the owner of her, for that particular voyage; and, therefore, barratry can be committed against him, even though the barratrous act be committed with the consent of the actual owners of the ship (1 Park, 190).

It is a matter of no moment, whether the loss happen during the time of committing the act of barratry, or during the course of the fraudulent voyage or deviation, or after the vessel has again returned to her regular course (1 Park, 189); but, it must happen during the course of the voyage insured, and within the time limited in the policy,—generally twenty-four hours after being moored in good safety; and, therefore, where the master had been guilty of smuggling, and the vessel arrived on 1st September, and lay in safety until the 27th, when she was seized for the smuggling, —the underwriters were held not liable for the loss (Lockyer *v.* Offley, 1 T. R. 252).

These are the more common instances of barratry; and although none of these are crimes punishable by law, yet, the same term is applied to other and more heinous acts,—as, wilfully destroying or setting fire to the ship, &c.,—which, in this country, are severely punishable by statute.

By one statute, it is enacted, that, "if any person shall unlawfully and maliciously damage, otherwise than by fire, any ship or vessel, whether in a complete or unfinished state, with intent to destroy the same, or to render the same useless,—every such offender shall be guilty of felony; and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such punishment" (7 and 8 Geo. IV., c. 30, § 10). By a more recent statute, it is also enacted, "that, whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy, any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony, and, being convicted, shall suffer death" (7 Wm. IV. and 1 Vict., c. 89, § 4).

By this statute, it is also enacted, "that, whosoever shall unlawfully exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do

anything tending to the immediate loss and destruction of any ship or vessel in distress, shall be guilty of felony, and, being convicted thereof, shall suffer death" (§ 5).

It also enacts, that, "whosoever shall unlawfully and maliciously set fire to, or in anywise destroy, any ship or vessel, whether the same be complete or in an unfinished state, or shall unlawfully and maliciously set fire to, cast away, or in anywise destroy, any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten, or shall underwrite, any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond seas for the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years" (§ 6).

The same statute also enacts,—"that whosoever shall, by force, prevent or impede any person endeavouring to save his life from any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore (whether he shall have been on board or have quitted the same), shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond seas, for the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years" (§ 7). And also, "that, whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast ashore, or any goods, merchandise, or articles of any kind, belonging to such ship or vessel, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond seas, for any term not exceeding fifteen years, nor less than ten years, or to be imprisoned for any term not exceeding three years" (§ 8).

Again, as to the offences of turning pirate, running away with the ship or cargo, or making a revolt in the ship, an English statute enacted, "that, if any commander, or master of any ship, or seaman, or mariner, shall, in any place where the admiral hath jurisdiction, betray his trust, and turn pirate, enemy, or rebel, and piratically and feloniously run away with his or their ship or ships, or any barge, boat, ordnance, ammunition, goods, or merchandises, or yield them up voluntarily to any pirate, or shall bring any seducing messages from any pirate, enemy, or rebel, or consult, combine, or confederate with, or attempt, or endeavour to corrupt any commander, master, officer, or mariner to yield up, or run away with,

any ship, goods, or merchandise, or turn pirate, or go over to pirates,—or if any person shall lay violent hands on his commander, whereby to hinder him from fighting in defence of his ship and goods committed to his trust, or shall confine his master, or make or endeavour to make a revolt in the ship,—he shall be adjudged, deemed, and taken to be a pirate, felon, and robber, and, being convicted thereof, according to the directions of this act, shall have and suffer pains of death, loss of lands, goods, and chattels, as pirates, robbers, and felons on the seas ought to have and suffer" (11 and 12 Wm. III., c. 7, § 9, made perpetual by 6 Geo. I., c. 9). And, by a recent statute, it is enacted, "that, persons convicted of any offence, which, by the acts referred to in this section, amounts to piracy, shall be liable to be transported for life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years" (7 Wm. IV. and 1 Vict., c. 88, § 3).

Having thus detailed to you the punishments of these crimes, I will close this letter with a matter which may be considered more personal to yourselves. I need not tell you, that the very full and almost unlimited trust reposed in a shipmaster, is checked by the right which his owners have to dismiss him, when and where they please, and without giving any reasons for their doing so,—leaving him, should he be improperly dismissed, to his remedy, by a claim of damages. But, although they have this power, the master may attempt to defeat it, and to keep possession of the ship, by withholding the certificate of registry of the vessel, so as a new master cannot be legally appointed. To meet this, the Merchant Shipping Act has provided a remedy.

By § 50 of the act, it is enacted, that the certificate of registry must be used only for the lawful navigation of the ship, and is not subject to detention by reason of any title, lien, charge, or interest whatsoever, which any owner, mortgagee, or other person may have or claim to have on or in the ship described in that certificate. *If any person whatever*,—whether interested in the ship or not,—refuses, on request, to deliver up the certificate when it is in his possession or under his control, to the person entitled, for the time being, to the custody thereof, for the purpose of the ship's navigation as already mentioned,—or to any registrar, officer of customs, or other person legally entitled to require such delivery,—any justice of the peace,—by a warrant under his hand and seal,—or any court capable of taking cognisance of the matter,—can cause the person so refusing to appear before him and be examined touching that refusal; and unless it is proved to the satisfaction of the justice or court, that there was reasonable cause for such refusal,—the offender incurs a penalty not exceeding £100. But if it is made to appear to the justice or

court, that the certificate is lost, the party complained of is to be discharged, and, thereupon, the justice or court certify that the certificate of registry is lost (17 and 18 Vict., c. 104, § 50).

If the person so charged with detaining or refusing,—is proved to have absconded, so that the justice's warrant or process of the court cannot be served upon him,—or if he persists in his refusal to deliver the certificate,—then the justice or court certify the fact, and the same proceedings can then be taken as in the case of a certificate of registry mislaid, lost, or destroyed, or as near thereto as circumstances permit (§ 51).

In the event of the certificate of registry being mislaid, lost, or destroyed, if this event occurs at any port in the United Kingdom, —the ship being registered in the United Kingdom,—or at any port in any British possession,—the ship being registered in the same British possession,—then the registrar of her port of registry grants a new certificate of registry in lieu of and as a substitute for her original certificate. But if this event occurs elsewhere,—the master, or some other person having knowledge of the circumstances, must make a declaration before the registrar of any port having a British registrar, at which the ship is at the time or first arrives after this mislaying, losing, or destruction;—and this declaration must state the facts of the case,—and the names and descriptions of the registered owners,—to the best of the declarant's knowledge and belief. Thereupon, the registrar grants a provisional certificate as near to the form appointed by the act as circumstances permit, and there is inserted in it a statement of the circumstances under which this provisional certificate was granted (§ 48). And, within ten days after the ship's first subsequent arrival at her port of discharge in the United Kingdom,—or if registered elsewhere, at her port of discharge in the British possession within which her port of registry is situate,—this provisional certificate must be delivered up to the registrar thereof, who thereupon grants a new one, as near to the form appointed by the act as circumstances permit. If the master neglects to deliver up this provisional certificate within the time before mentioned, he incurs a penalty not exceeding £50 (§ 49).—I am, &c.

LETTER XXV.

Responsibility and liability of owners and master—Of owners, for repairs, &c.—General rule—Who liable as owners—Responsibility for money borrowed—For contracts in employing vessel—Limitation of—Under exceptions in charter-party and bills of lading—Further limitation of—By Merchant Shipping Act—Exemption of fire, &c. —Does not apply to small craft—Measure of owner's liability—Value of carriage of goods and passage money considered as freight—In cases of separate losses—Proceedings by Board of Trade in case of loss of life or personal injury—Conduct of proceedings—Rules as to damages—Actions by individuals—In case of several claims—Damages as between part owners—Liability of any master and seaman—Act to extend to unrecognised British ships—Responsibility under Pilots' Act—Masters and mariners excepted from statute—Liability of master for repairs, &c.—And for contracts of carriage—Conclusion.

Gentlemen,—I have reserved, until this last letter, the consideration of an important subject—viz., the responsibility and liability of the owners and master of the vessel. Let us take, first, the responsibility of the owners, which may be either for repairs and necessaries,—for money borrowed by the master,—or to the shippers of goods.

It has been already repeatedly mentioned, in the course of these letters, that, in a foreign port, and in places where the owners do not reside, and have no agent, the master is their sole accredited and recognised agent, in making necessary repairs, in victualling and in fitting out the vessel, and for such repairs or supplies as are reasonably fit and proper for the occasion, the owners are liable. The general rule is, "that whatever is fit and proper for the service on which the vessel is engaged,—whatever the owner of that vessel, as a prudent man, would have ordered, if present at the time, comes within the meaning of the term 'necessary,' as applied to repairs done, or things provided for the ship, by the order of the master, for which the owners are liable" (Webster *v.* Seekamp, 4 B. A. 352).

This is the common rule, where the master has been appointed by the owners, and there is no question as to the legal ownership. But it is not a general rule, that those whose names appear on the register, as registered owners, are liable for repairs done, or furnishings supplied to the vessel, because the registered owners may have sold their interest in the vessel, although the title of the purchaser has not been completed (Trewhella *v.* Rowe, 11 East, 435); or the vessel may have been let under charter-party for a certain specified period, with an obligation on the charterer to keep the vessel in repair during that period (Fraser *v.* Marsh, 13 East, 239; Reeve *v.* Davies, 1 A. E. 312); or the repairs may have been ordered by a

master who has been appointed by a stranger to the registered owners (Jennings *v.* Griffith, 1 R. M. 42). In these and the like cases, the true question is, upon whose credit was the work done? But where there is no dispute as to the liability, the owners will not be discharged, although the master may have been supplied with money to pay for the necessary repairs, furnishings, or supplies, if he has not actually paid for them (Abbot, 135).

As to the owner's responsibility for money borrowed by the master, the general rule is,—that, where the master necessarily borrows money to pay for repairs, stores, or furnishings, which he cannot otherwise procure on the credit of himself, or his owners, or where it is so borrowed for the further prosecution of the voyage, the owners are liable to the lenders (Abbot, 139), provided the party so sought to be made liable be actually an owner; because the register is no kind of ownership, so as to fix the party whose name appears thereon, for contracts entered into on behalf of the ship by the master (Myers *v.* Willis, 2 Jur. N. S. 41). In order, however, to justify the master in borrowing, it is not necessary that the occasion should arise in a foreign country; but the case must be one of *pressing necessity*, when the master and owner cannot communicate without great prejudice and delay,—as, where the master of a coasting vessel,—being at Cardiff, in Glamorganshire, and his owners being resident in North Wales,—having borrowed money at Cardiff, where the owners had no agent,—and it having been proved that this advance was necessary for the purposes of the voyage,—the owners were held liable (Arthur *v.* Barton, 6 M. W. 188). And where the owner of a ship resided at Exeter, and the master of his ship being wind-bound in a river, at the distance of a day's post from Exeter, borrowed £5 to buy provisions, although, when called as a witness, the master was not asked whether he could have got the goods on the owner's credit:—it was held, that the jury were justified in inferring, that there was such necessity for borrowing the £5 as to make the owner liable (Edwards *v.* Havell, 23 L. J. 7). But, where a ship was at Swansea, and the owner at Llanelly, only eleven miles distant, and the master, being in want of money to clear the ship, and having been unable to raise money by selling part of the cargo as the owner had directed, sent three messages to the owner for money, but received none, and he, thereupon, borrowed £10, telling the lender of his applications to the owner:—it was held that the master was not authorised to borrow, and that the lender could not recover from the owner, although it had been found that the money was advanced for the necessary use of the ship, and on the credit of the owner of the ship, not of the master (Johns *v.* Simons, 2 Ad. E. N. S. 424). This borrow-

ing, however, must not be understood of an indefinite supply of cash, with which the master may do as he pleases;—the lender must see that the money lent is warranted by the necessity, which the master has authority only to supply (Rocker *v.* Busher, 1 Stark. 27), and the money must be advanced to the master expressly for the use of the ship (Thacker *v.* Moates, 1 M. M. 79). And the master has no authority to hypothecate for money borrowed in a foreign port for necessary repairs and disbursements, and, *by the same instrument*, pledge the personal credit of his owners for such advances, whether maritime interest be stipulated for or not; but a bottomry bond may be given at the same time with, and as a collateral security for, bills drawn on the owners for money so borrowed (Stainbank *v.* Shepard—in error—17 Jur. 1032). But, as this matter has been already fully treated in the course of these letters, it need not here be resumed.

The power of the master of a general ship, in employing her, has also been already noticed; and the owners are bound by all contracts made by the master, in the usual course of that employment (Abbot, 124). They are, therefore, responsible to the shippers for their goods, and for the acts of the master; and, should any of the goods be lost or damaged, they are liable for the value (Ellis *v.* Turner, 8 T. R. 831). Even where the master employed a broker, to advertise the vessel as a general ship, and the broker advertised her to sail with convoy, but this was not complied with, the owners were held liable (Rinquest *v.* Ditchell, Abbot, 129). In the cases in which the master can enter into a charter-party, in his own name, in a foreign port, in the usual course of the vessel's employment, as mentioned in a previous letter,—the owners are liable to the shippers under that contract (Abbot, 126).

But, under the exceptions in the charter-party and the bills of lading, the owners and master are exempted from liability in certain cases;—as, first, from loss by an event falling within the meaning of the expression, "act of God and the Queen's enemies." The act of God comprehends all accidents arising from an inevitable peril, or from physical causes, as distinguished from those arising from the agency of man,—such as natural accidents, arising from tempests, hurricanes, lightning, or earthquakes, or from the plague, or an epidemic contagion among the crew (Abbot, 382; Holt, 411). For these, the master and owners are not liable; but for accidents arising from the negligence of man, or which it could have been in the power of man to prevent,—the owners are responsible;—as, where a collision happens through negligence, or the vessel is run on a rock or shallow, through unskilful or negligent navigation,—or where an accident is occasioned by want of lights during the night,

in a place where, by the usage of the navigation, they are required. In order to excuse the master and owners, however, the act of God must be the immediate, and not the remote cause of the loss or accident (Smith *v.* Shepherd, Abbot, 383). Secondly, from "the perils and dangers of the seas, and accidents of the seas, rivers, and navigation." The meaning of the expression, "perils of the sea," &c., is understood to comprehend all accidents arising from the winds and seas, which could not be prevented by the skill and care, or by the precaution or foresight, of the master or mariners; —as, where a vessel strikes on a rock, runs on a sandbank, or comes in accidental collision with another vessel, and when no blame, fault, or ignorance, unskilfulness, or negligence can be imputed to the master or mariners. Thus, where a vessel was run foul of in daylight, and not in a storm, by one of two ships, but there was no blame or fault attributable to any one,—this was held to fall within the meaning of this exception, and to have happened by a peril of the sea, so as to relieve the owners from liability for the goods (Buller *v.* Fisher, 3 Esp. 67). Robbery by pirates, or from a ship at sea, or in a river, is also held to fall under this exception; and so, also, where goods are plundered by the inhabitants, on the ship being driven on shore (Abbot, 385). The third exception is, "the restraints of rulers and princes," and this is chiefly exemplified in the case of an embargo; but it must be an actual and operative restraint, not merely an expected and contingent one, which will excuse the non-performance on the part of the masters and owners (Aitkenson *v.* Ritchie, 10 East, 530).

But, by the Merchant Shipping Act, the liability of owners is further limited, as I will now detail.

By that act it is declared, that no owner of any sea-going ship or share therein is liable to make good, *to any extent whatever*, any loss or damage that may happen, *without his actual fault or privity*, of or to any of the following things:—(1.) Of or to any goods, merchandise, or other things whatsoever taken in or put on board his ship, by reason of any fire happening on board that ship:—(2.) Of or to any gold, silver, diamonds, watches, jewels, or precious stones, taken in or put on board his ship, by reason of any robbery, embezzlement, making away with, or secreting thereof,—unless the owner or shipper thereof has, at the time of shipping the same, inserted in his bills of lading, or otherwise declared in writing to the master or owner, the true nature and value of such articles (§ 503).

The previous statute 26 Geo. III., c. 86, contained enactments in substantially the same terms as the foregoing; but, it was held, that section 2 of that statute (corresponding to the first division of the above section) did not apply to gabbarts or lighters; and that, where

goods are destroyed by fire, accidentally, or through the negligence of the master, &c., the shipowner was not protected by the statute, but was responsible at common law (Hunter *v.* M'Gowan, 1 Bligh, 573; Morewood *v.* Pollok, 1 E. B. 743).

No owner of any sea-going ship or share therein is answerable in damages to an extent beyond the value of his ship and the freight due or to grow due in respect of that ship, during the voyage which, at the time of any of the events aftermentioned happening, is in prosecution or contracted for,—in cases where all or any of the following events occur, *without his actual fault or privity*:—

(1.) Where any loss of life or personal injury is caused to any person being carried in his ship:—

(2.) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship:—

(3.) Where any loss of life or personal injury is,—by reason of the improper navigation of such sea-going ship as aforesaid,—caused to any person carried *in any other ship or boat*:—

(4.) Where any loss or damage is,—by reason of any such improper navigation as aforesaid,—caused to any other ship or boat,—or to any goods, merchandises, or other things whatsoever on board any other ship or boat:—

But subject to this proviso,—that in no case where any liability is incurred in respect of loss of life or personal injury *to any passenger*,—shall the value of the ship and freight be taken to be less than £15 per registered ton (§ 504). And, for the purpose now mentioned, the freight is deemed to include the value of the carriage of any goods or merchandise belonging to the owners of the ship,—passage money,—and also the hire due or to grow due under or by virtue of any contract,—except only such hire,—in the case of a ship hired for time,—as may not begin to be earned until the expiration of six months after such loss or damage (§ 505).

The owner of every sea-going ship or share therein is liable in respect of every loss of life, personal injury, loss of or damage to goods as aforesaid, arising on distinct occasions, to the same extent as if no other loss, injury, or damage had arisen (§ 506).

Whenever this liability has been or is alleged to have been incurred in respect of loss of life or personal injury, the Board of Trade may,—in its discretion, and after giving not less than three days' notice by post or otherwise to the party to be made the defendant,—require,—by warrant sealed with the Board's seal, or signed by one of its secretaries,—the sheriff having jurisdiction over any place in the United Kingdom, to summon a jury at a time and place specified in the warrant,—for the purpose of determining,—the number, names, and descriptions of the persons killed or injured by

reason of any wrongful act, neglect, or default. On receipt of this warrant, the sheriff summons a jury of twenty-four indifferent persons qualified to act as common jurymen,—or, if either party desires, a special jury,—to try the question in the manner directed by the act (§§ 507, 508).

Not less than ten days' notice of the time and place of the inquiry must be served by the Board of Trade on the defendant, and service on the master of the ship is deemed good service on the owner thereof, and, in respect of the proceedings on the inquiry, the master is deemed the agent and representative of the owner, with power to appear for him on such inquiry, and to do all matters and things which he himself could have done. If the defendant does not appear at the time of this inquiry, it is proceeded with the same as if he had appeared,—upon due proof of the service of this notice having been made upon him as before required. Payment of all damages and costs can be enforced on application of the party entitled thereto, by any of the superior courts in England, Ireland, or Scotland, by a rule or order of that court or of a judge thereof,—or otherwise as the court or judge thinks fit. But the Board of Trade may make any compromise it thinks fit, as to the damages payable in respect of personal injury, or of the death of any person; and any damages received in pursuance of such compromise, must, so far as the same extend, be applied in the same manner, and be subject to the same rules, as if the same were damages recovered on an inquiry instituted by the Board of Trade, as now to be noticed (§ 509).

The following rules are observed as to the damages recovered in any such inquiry, and the application thereof:—

(1.) The damages payable in each case of death or injury must be assessed at £30:—

(2.) The damages found due on any inquiry as aforesaid, are the first charge on the aggregate amount for which the owner is liable, and must be paid thereout in preference to all other claims:—

(3.) All these damages are to be paid to her Majesty's paymaster-general, to be distributed and dealt with by him in such manner as the Board of Trade directs. In directing this distribution, that Board has power,—in the first place,—to deduct and retain any costs incidental thereto;—in the next place,—as regards the sums paid in respect of injuries,—the Board directs payment to each person injured of such compensation,—not exceeding in any case the statutory amount, £30,—as the Board thinks fit;—and,—as regards the sums paid in respect of deaths,—the Board directs payment thereof for the benefit of the husband, wife, parent, and child of the deceased, or any of them,—in such shares,—upon such evidence,—and in such manner as the Board thinks fit:—

(4.) The Board refunds to the owner any surplus remaining under its control after this distribution, and the sum so refunded forms part of the residue to be afterwards mentioned:—

(5.) Neither the Board, nor any person acting under it, is liable to any action, suit, account, claim, or demand whatsoever, for or in respect of any act or matter done, or omitted to be done, in the distribution of the damages as aforesaid:—

(6.) If the amount paid to her Majesty's paymaster-general as already noticed, is insufficient to meet the demands upon it,—the several claims thereon must abate proportionally (§ 510).

Then, if, after the completion of any inquiry as aforesaid,—any person injured,—or the executor or administrator of any deceased person, is dissatisfied with the amount of statutory damage,—and estimates the damages payable in respect of such injury, or of his death, at a greater sum than the statutory amount,—or, in case of a compromise being made by the Board of Trade, than the amount accepted by the Board as compensation for the injury or death,—upon repaying or obtaining the repayment by the Board of Trade, to the owner, of the amount paid by him to the Board, in respect of the injury or death,—that person is at liberty to bring an action for the recovery of damages, in the same manner as if no power of instituting an inquiry by the Board had been given,—subject to this proviso:—that any damages recoverable by that person are payable only out of the residue (if any) of the aggregate amount for which the owner is liable, after deducting all sums paid to the paymaster-general in manner foresaid. If the damages so recovered do not exceed double the statutory amount,—such person pays to the defendant in the action all the costs thereof as taxed, as between attorney or agent and client (§ 511).

In cases where loss of life or personal injury has occurred by any accident, in respect of which the owner of any ship is or is alleged to be liable in damages,—no person is entitled to bring any action, or institute any suit or other legal proceedings in the United Kingdom, until the completion of the inquiry (if any) instituted by the Board of Trade,—or until the Board has refused to institute the same. And, for this purpose, the Board is deemed to have refused to institute such inquiry, whenever notice has been served on it by any person, of his desire to bring such action or institute such suit or other legal proceeding, and no inquiry is instituted by the Board in respect of the subject matter of the intended action, &c., for the space of one month after the service of this notice (§ 512). But whenever the Board of Trade,—having refused to institute an inquiry as aforesaid,—afterwards determines to institute the same,—the damages and costs (if any) recoverable on this inquiry, are payable

rateably with, and not in priority to, the costs and damages recovered in any other action, &c. (§ 513).

Nothing in this part of the Merchant Shipping Act limiting the liability of shipowners, is to be construed,—to lessen or take away any liability to which any master or seaman,—*being also owner or part owner of the ship to which he belongs*,—is subject in his capacity of master or seaman;—or,—to extend to any British ship not being a recognised British ship within the meaning of the Merchant Shipping Act (§ 516). The first part of this section is thus construed:—that if the master is a part-owner, but is sued in his character as master, and not as one of the several part-owners, he will not be entitled to plead the limitation in favour of owners in §§ 503 and 504 *ut supra*; but that, if he is sued as one of several part-owners, along with these other part-owners,—the circumstance of the loss having been occasioned through his fault or with his privity, will not take away from the other part-owners the benefit of the limitation given them by these sections.

Another limitation of liability is provided by § 388 of the Merchant Shipping Act, which enacts that no owner or master of any ship is answerable to any person whatever for any loss or damage *occasioned by the fault or incapacity of any* qualified pilot acting in charge of such ship, within any district where the employment of such pilot *is compulsory by law*.

The master is personally liable, for all repairs done, or goods furnished to the vessel, upon his orders, to the persons by whom the repairs are done, or goods furnished, unless he has taken care, at the time, to free himself from all personal responsibility (Abbot, 40). And, as a common carrier, he is also answerable for all contracts which he makes for the employment of the ship, and to the shippers of goods, for the goods shipped by them (Abbot, 124; Holt, 217); and, it has been held, that the master is answerable for the loss of goods, occasioned by a seizure of the ship, for a supposed breach of the revenue laws, though in the result, it was found, that there was no cause for condemnation (Gosling *v.* Higgins, 1 Camp. 451). But, in an action against him by shippers, he has the same benefit of the exceptions in the charter-party and bill of lading, as the owners have.

In closing these letters, I may be permitted to hope, that I have brought under your notice almost everything necessary for you to know, of your duties as a master, a servant, a steward, and an agent. These duties are arduous, and, in many cases, difficult;—

the responsibility, which attaches to your situation, is great;—and, being well informed as to these duties, and that responsibility, must be to you a matter of the last importance. But, in all things, and in every situation, your conduct ought to be candid and straightforward, and your intentions honest and upright; and, when they are so, you may almost always depend upon receiving the approbation of your owners, and of the underwriters, whatever may be the result. I would earnestly recommend these letters to your attentive and careful perusal; and I may be allowed to flatter myself, that, were the authorities there quoted and referred to, more familiar to shipmasters, and more attentively and industriously followed by them, than, in the great majority of cases, they now are, there would be less grounds and fewer causes for complaint against their conduct and actings than there are, I am afraid, at present, too good reasons for, while, at the same time, the master himself could act with more knowledge, certainty, and confidence.—I am, &c.

WEIGHT AND VALUE OF GOLD AND SILVER FOREIGN COINS.

UNITED STATES OF AMERICA.	*dwt. grs.*	*Eng. value.* £ *s.* *d.*
GOLD.		
National Denominations.		
Double Eagle of 10 Dollars	11 6	2 1 1
Eagle of 5 Dollars	5 15	1 1 10$\frac{3}{4}$
Half Eagle (2$\frac{1}{2}$ Dollars)	2 19$\frac{1}{2}$	0 10 11$\frac{1}{4}$
SILVER.		
Dollar ($) or 100 Cents	17 10	0 4 1$\frac{1}{2}$
Half Dollar	8 17$\frac{1}{2}$	0 2 1$\frac{3}{4}$
Quarter Dollar	4 8$\frac{3}{4}$	0 1 0$\frac{3}{4}$
FRANCE.		
New Coin.		
GOLD.		
20 Franc Piece	4 3$\frac{1}{2}$	0 15 10$\frac{1}{2}$
40 Do.	8 7	1 11 8$\frac{1}{2}$
SILVER (ARGENT BLANC).		
5 Franc Piece	16 1	0 4 0
2 Do.	6 11	0 1 7
1 Do. or 100 Centimes	3 5$\frac{1}{2}$	0 0 9$\frac{1}{2}$
$\frac{1}{2}$ Do. or 50 Centimes	1 15	0 0 4$\frac{3}{4}$
$\frac{1}{4}$ Do. or 25 Centimes	0 18$\frac{1}{2}$	0 0 2$\frac{1}{4}$
AUSTRIA AND BOHEMIA.		
GOLD.		
Emperor's Ducat	2 5$\frac{3}{4}$	0 9 5
Hungarian Ducat	2 5$\frac{1}{4}$	0 9 5$\frac{1}{4}$
Half Sovereign	3 7$\frac{1}{2}$	0 14 9
Quarter Sovereign	1 15$\frac{3}{4}$	0 7 4$\frac{1}{2}$
SILVER.		
Crown	18 1	0 4 1$\frac{1}{2}$
Half Rix-Dollar, or Florin, or 60 Kreuzers	9 0$\frac{1}{2}$	0 2 0$\frac{1}{2}$
20 Kreuzers	4 6$\frac{1}{4}$	0 0 8$\frac{1}{4}$
10 Do.	2 3$\frac{1}{4}$	0 0 4

SPAIN.	dwt. grs.	Eng. value. £ s. d.
GOLD.		
National Denominations.		
Doubloon of 8 Crowns, 1772 to 1786	17 9	3 6 7
———— 4 Crowns	8 16½	1 13 3½
———— 2 Crowns	4 8¼	0 16 7¾
Half-pistol, or Crown	2 4⅛	0 8 3¾
Doubloon of 8 Crowns, since 1786	17 9	3 4 8
———— 4 Crowns	8 16½	1 12 4
———— 2 Crowns	4 8¼	0 16 2
Half-pistol, or Crown	2 4⅛	0 8 1
SILVER.		
Piaster, since 1772	17 8	0 4 3¾
Real of 2, or Peseta, or one-fifth of a Piaster	3 18	0 0 10½
Real of 1, or Half Peseta, or one-tenth of a Piaster	1 21	0 0 5¼
Reallillo, or one-twentieth of a Piaster	0 22½	0 0 2½
These three last Coins have currency in the Peninsula only.		
PORTUGAL.		
GOLD.		
Lisbonine, or Moidore of 4800 Reis	6 22	1 6 11½
Half Do. of 2400 Reis	3 11	0 13 5½
Quarter Do. of 1200 Reis	1 17½	0 6 8¾
Portuguese, or Moiadobra of 6400 Reis	9 5½	1 15 11
Half Portuguese of 3200 Reis	4 14¾	0 17 10½
Piece of 16 Testons, or 1600 Reis	2 7½	0 8 11¼
Do. of 12 Testons, or 1200 Reis	1 17⅜	0 6 4½
Do. of 8 Testons, or 800 Reis	1 3¾	0 4 5¾
Cruzada of 480 Reis	0 16¼	0 2 7½
SILVER.		
New Cruzada of 480 Reis	9 1	0 4 11
1000 Reis=1 Milrea	.....	0 4 8½
SWEDEN.		
GOLD.		
Ducat	2 5	0 9 3¼
Half Do.	1 2½	0 4 7½
Quarter Do.	0 13¼	0 2 3¾
SILVER.		
Rix-dollar of 48 Schillings, from 1720 to 1802	18 17	0 4 6
Two-thirds of Rix-dollar, or 32 Schillings	12 11⅓	0 3 0
One-third, or 16 Schillings	6 5⅔	0 1 6
HAMBURGH.		
GOLD.		
Ducat ad Legem Imperii	2 5⅔	0 9 4¾
New Town Ducat	2 5¼	0 9 4
SILVER.		
Mark Banco (imaginary)	.....	0 1 5½
16 Schilling Piece, Convention or current Mark	5 20	0 1 2½
Rix-dollar Specie	18 18	0 4 7

HOLLAND AND THE NETHERLANDS.	dwt.	grs.	Eng. value. £	s.	d.
GOLD.					
National Denominations.					
Ducat	2	5¾	0	9	5¾
Ryder	6	10½	1	5	1½
20 Florins, 1808	9	7¾	1	14	2¾
10 Florins	4	15⅞	0	17	1⅜
10 Williams, 1818	4	7½	0	16	5½
SILVER.					
Florin	6	22	0	1	8½
Escalin (6 Sous)	3	4⅝	₡	0	6
Ducaton, or Ryder	20	22	0	5	5
Ducat, or Rix-dollar	18	6	0	4	4
The Florin is divided into 20 Sous, and the Sou into 5 Cents or Stivers.					
DENMARK.					
GOLD.					
Ducat, current since 1767	2	0	0	7	6
Ducat specie, 1791 to 1802	2	5¾	0	9	4¾
Christian, 1773	4	7	0	16	7
SILVER.					
Rigs-dollar, of the value of 96 Danish Schillings of 1776	18	14	0	2	2½
Rix-dollar, or Piece of 6 Danish Marks of 1750	17	6	0	4	0
Danish Mark of 16 Schillings of 1776	4	0	0	0	7½
PRUSSIA AND SAXONY.					
GOLD.					
Ducat	2	5¾	0	9	4
Frederick	4	7	0	16	6
Half Do.	2	3½	0	8	3
SILVER.					
Rix-dollar, or Crown of 30 Silbergroschen, 1823	14	6½	0	2	11¼
Piece of 5 Silbergroschen	2	9	0	0	5⅝
Silbergros		.....	0	0	0¾
MOGUL (EAST INDIES.)					
GOLD.					
Mohur of Bengal	7	23	1	13	8
Do. of Bombay	7	10½	1	10	1
Gold Rupee, Bombay	7	11	1	9	2
Do. of Madras	7	12	1	9	3
Star Pagoda, Madras	2	4½	0	7	6
SILVER.					
Rupee, Sicca	7	12	0	2	0½
Do., Arcott	7	9	0	1	11⅝
Do., Bombay	7	11	0	1	11
Do., Broach	7	10	0	1	9

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